

2-12-1988

# Salt River Pima-Maricopa Indian Community Water Rights Settlement Agreement of 1988

Salt River Pima-Maricopa Indian Community et al

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Salt River Pima-Maricopa Indian Community Water Rights Settlement Agreement (Feb 12, 1988)

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AGREEMENT

THIS AGREEMENT, dated as of February 12, 1988, is entered into among the United States of America; the State of Arizona; the Salt River Pima-Maricopa Indian Community; the Salt River Project Agricultural Improvement and Power District; the Salt River Valley Water Users' Association; the Roosevelt Water Conservation District; the Roosevelt Irrigation District; the Arizona Cities of Chandler, Glendale, Mesa, Phoenix, Scottsdale, and Tempe, and the Arizona Town of Gilbert; and the Central Arizona Water Conservation District.

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23			
24	"3.g."	<u>Salt River Pima-Maricopa Indian Community</u> <u>v. Salt River Valley Water Users' Association,</u> <u>et al., No. CIV 83-2500 PHX WPC (Exhibit not</u> <u>executed due to dismissal of litigation)</u>	
25			
26			

EXHIBITS

- 1
- 2 "3.h.1" River Water Exchange Contract - City of  
Chandler, Arizona
- 3
- 4 "3.h.2" River Water Exchange Contract - City of  
Glendale, Arizona
- 5
- 6 "3.h.3" River Water Exchange Contract - City of  
Scottsdale, Arizona
- 7
- 8 "3.h.4" River Water Exchange Contract - City of  
Tempe, Arizona
- 9
- 10 "3.h.5" River Water Exchange Contract - City of  
Mesa, Arizona
- 11
- 12 "3.h.6" River Water Exchange Contract - City of  
Phoenix, Arizona
- 13
- 14 "3.h.7" River Water Exchange Contract - Town of  
Gilbert, Arizona
- 15
- 16 "3.i" RWCD CAP Water Service Subcontract Amendment  
and Superior Court Decree Validating Subcontract
- 17
- 18 "3.j" SRPMIC CAP Water Delivery Contract Amendment
- 19
- 20 "3.k" RID, City of Phoenix, SRPMIC and SRP Water  
Exchange Agreement
- 21
- 22 "3.l" Plan 6 Agreement Approval - City of Tucson
- 23
- 24 "3.m.1" City of Chandler - SRPMIC Project Water  
Lease Agreement
- 25
- 26 "3.m.2" City of Glendale - SRPMIC Project Water  
Lease Agreement
- "3.m.3" City of Scottsdale - SRPMIC Project Water  
Lease Agreement
- "3.m.4" City of Tempe - SRPMIC Project Water Lease  
Agreement
- "3.m.5" City of Mesa - SRPMIC Project Water Lease  
Agreement
- "3.m.6" City of Phoenix - SRPMIC Project Water  
Lease Agreement
- . . .

1 EXHIBITS

2 "3.m.7" City of Gilbert - SRPMIC Project Water  
Lease Agreement

3 "3.n" SRP-RWCD Extension Agreement

4 "3.o" Waiver and Release of Claims - SRPMIC

5 "3.p" Amendment to Bartlett Dam Agreement

6 Paragraph 8.0

7 "8.1" Additional Stored Water Graph

8 Paragraph 10.0

9 "10.2" RWCD Credit Lands

10 "10.3" Map Showing RWCD boundaries, and City CAP  
11 planning areas

12 Paragraph 12.0

13 "12.3" RWCD Assignment to Cities

14 "12.14" Trust Agreement

15 Paragraph 21.0

16 "21.6" Salt River Pima-Maricopa Indian Community  
Water Rights Settlement Act

17 "21.7" 1977 Water Commissioner's Report

18 "21.14" Statement of Policies and Principles  
19 Regarding the Use of CAP Facilities to  
Facilitate Indian Water Rights Settlements

20 . . .

21 . . .

22 . . .

23 . . .

24 . . .

25 . . .

26 . . .

1    1.0   RECITALS

2  
3    1.1   The continued development of the Salt River Valley, being dependent upon  
4    reliable allocation of Arizona's water resources, has been jeopardized by the  
5    assertion of substantial water right claims based upon Federal, State and other  
6    law.  These include claims by the Salt River Pima-Maricopa Indian Community and  
7    its members to a Tribal homeland water right sufficient to irrigate approxi-  
8    mately 27,200 acres on the Salt River Pima-Maricopa Indian Community's Reserva-  
9    tion east of Scottsdale.  In addition, the validity of certain non-Indian claims  
10   to water and the liability of the United States and other water users to the  
11   Salt River Pima-Maricopa Indian Community have been raised.  These issues are  
12   the subject of extensive and complex litigation pending in the Arizona State and  
13   Federal courts.

14  
15   1.2   It is acknowledged by all parties to this Agreement that the resolution of  
16   these conflicts must recognize long-standing vested water rights arising under  
17   Federal law, State law, the Kent Decree, and through contractual relationships  
18   with the Salt River Valley Water Users' Association, the Salt River Project  
19   Agricultural Improvement and Power District and the United States.  Settlement  
20   of these issues must also accommodate the imperative need of the Cities of  
21   Chandler, Glendale, Mesa, Phoenix, Scottsdale, and Tempe, and the Town of Gil-  
22   bert to satisfy increasing municipal and industrial ("M&I") water demands.

23  
24   1.3   The representatives of the United States of America, the State of Arizona,  
25   the Salt River Pima-Maricopa Indian Community, the Salt River Valley Water  
26   Users' Association, the Salt River Project Agricultural Improvement and Power

1 District, the Roosevelt Water Conservation District, the Roosevelt Irrigation  
2 District, the Cities of Chandler, Glendale, Mesa, Phoenix, Scottsdale, and Tempe  
3 and the Town of Gilbert, Arizona, and the Central Arizona Water Conservation  
4 District have agreed to permanently settle the water rights of the Salt River  
5 Pima-Maricopa Indian Community and its members, to finally resolve pending liti-  
6 gation on water rights and damage claims, and to seek funding for implementation  
7 of the settlement.

8  
9 1.4 It is the policy of the United States, in fulfillment of its trust respon-  
10 sibility to Indian tribes, to promote Indian self-determination and economic  
11 self-sufficiency, and to settle, wherever possible, the water rights claims of  
12 Indian tribes without lengthy and costly litigation.

13  
14 1.5 The objective of this settlement is to resolve all outstanding water-  
15 related litigation and to settle, once and for always, the water rights of the  
16 Salt River Pima-Maricopa Indian Community, its members, and the owners of allot-  
17 ted lands within the Salt River Pima-Maricopa Indian Community's Reservation  
18 based upon Federal, State and other laws by providing to the Salt River Pima-  
19 Maricopa Indian Community sufficient water from various sources to irrigate  
20 27,200 acres of agricultural land within the Salt River Pima-Maricopa Indian  
21 Community's Reservation, 14,500 acres of which are located south of the Arizona  
22 Canal and within the exterior boundaries of the Salt River Reservoir District  
23 and 12,700 acres of which are located north of the Arizona Canal and outside the  
24 exterior boundaries of the Salt River Reservoir District; provided, however,  
25 that the claims of allottees and the Salt River Pima-Maricopa Indian  
26 . . .

1 Community for damages against the United States in the United States Claims  
2 Court are not resolved by this settlement.

3 NOW, THEREFORE, in consideration of the premises and of the promises and  
4 agreements hereinafter set forth, the parties hereto agree as follows:

5  
6 2.0 DEFINITIONS

7 This Agreement will employ abbreviated terms which will have the meanings  
8 stated below.

9  
10 2.1 "Additional Active Conservation Capacity" shall mean the difference between  
11 the Existing Active Conservation Capacity in Roosevelt Reservoir prior to modi-  
12 fication of Roosevelt Dam and the Active Conservation Capacity after modifica-  
13 tion of Roosevelt Dam; "Active Conservation Capacity" shall mean the reservoir  
14 capacity assigned to regulate reservoir outflow for irrigation, power and M&I  
15 use. The modifications referred to in this definition are the modifications  
16 made as a part of Plan 6.

17  
18 2.2 "Allottees" shall mean owners of allotted land within the Salt River Pima-  
19 Maricopa Indian Community Reservation.

20  
21 2.3 "Bartlett Dam Agreement" shall mean the agreement between the United States  
22 and the Salt River Valley Water Users' Association dated June 3, 1935, relating  
23 to Verde River storage works.

24  
25 2.4 "CAP" shall mean the Central Arizona Project, a reclamation project con-  
26 structed by the United States of America pursuant to the Colorado River Basin  
Project Act of September 30, 1968, 82 Stat. 885, as amended.

1  
2 2.5 "CAP Master Repayment Contract" shall mean the Contract between the United  
3 States and the Central Arizona Water Conservation District for Delivery of Water  
4 and Repayment of Costs of the Central Arizona Project, dated December 15, 1972  
5 (Contract No. 14-06-W-245), and any amendment or revision thereof.  
6

7 2.6 "CAWCD" shall mean the Central Arizona Water Conservation District, a poli-  
8 tical subdivision of the State of Arizona, which is the Contractor under the CAP  
9 Master Repayment Contract.  
10

11 2.7 "Effluent" shall mean water which, after being withdrawn as groundwater or  
12 diverted as surface water, has been used for domestic, municipal or industrial  
13 purposes and which is available for reuse for any purpose, whether or not the  
14 water has been treated to improve its quality.  
15

16 2.8 "Gila River Adjudication" shall mean that action pending in the Superior  
17 Court of the State of Arizona in and for the County of Maricopa styled as IN RE  
18 the General Adjudication of All Rights To Use Water In The Gila River System and  
19 Source, W-1 (Salt), W-2 (Verde), W-3 (Upper Gila), W-4 (San Pedro).  
20

21 2.9 "Horseshoe Dam Agreement" shall mean the contract between the Salt River  
22 Valley Water Users' Association, Phelps Dodge Corporation, and Defense Plant  
23 Corporation dated March 1, 1944.  
24

25 2.10 "Kent Decree" shall mean the decree dated March 1, 1910, entered in Patrick  
26 T. Hurley v. Charles F. Abbott, et al., Cause No. 4564, in the District Court of

1 the Third Judicial District of the Territory of Arizona, in and for the County  
2 of Maricopa, and all decrees supplemental thereto.

3  
4 2.11 "Plan 6" shall mean Plan 6 for the Regulatory Storage Division of the CAP  
5 which for the purposes of this Agreement is limited to modifications to Roose-  
6 velt Dam on the Salt River.

7  
8 2.12 "Plan 6 Agreement" shall mean the agreement among the United States; the  
9 CAWCD; the Flood Control District of Maricopa County; the Salt River Project;  
10 the Arizona Cities of Chandler, Glendale, Mesa, Phoenix, Scottsdale and Tempe,  
11 the State of Arizona; and the City of Tucson, for funding of Plan 6 facilities  
12 of the CAP, and for other purposes, dated on April 15, 1986, and any amendments  
13 or supplements thereto.

14  
15 2.13 "RID" shall mean the Roosevelt Irrigation District, an irrigation district  
16 organized under the laws of the State of Arizona.

17  
18 2.14 "RWCD" shall mean the Roosevelt Water Conservation District, an irrigation  
19 district organized under the laws of the State of Arizona.

20  
21 2.15 "Secretary" shall mean the Secretary of the United States Department of the  
22 Interior or his duly authorized representative.

23  
24 2.16 "SRP" shall mean the Salt River Project Agricultural Improvement and Power  
25 District, a political subdivision of the State of Arizona, and the Salt River  
26 Valley Water Users' Association, an Arizona corporation.



1  
2 2.17 "SRPMIC" shall mean the Salt River Pima-Maricopa Indian Community, a com-  
3 munity of Pima and Maricopa Indians organized under Section 16 of the Indian  
4 Reorganization Act of June 18, 1934, 48 Stat. 987, and duly recognized by the  
5 Secretary.

6  
7 2.18 "SRPMIC Reservation" shall mean that area of land generally shown on the  
8 map attached as Exhibit "2.17" to this Agreement.

9  
10 2.19 "SRRD" shall mean the Salt River Reservoir District as defined , on the  
11 effective date of this Agreement, in Article IV, Section 3, of the Articles of  
12 Incorporation of the Salt River Valley Water Users' Association.

13  
14 3.0 STIPULATIONS AND AGREEMENTS

15 This Agreement includes additional and subsidiary agreements in the form of  
16 contracts, stipulations for settlement of litigation and the entry of consent  
17 decrees and waivers of claims as exhibits which are attached and incorporated  
18 herein and are described as follows:

19 (a) Salt River Pima-Maricopa Indian Community v. United States, et al.,  
20 CIV 82-745 PHX RGS, United States District Court for the District of Arizona:  
21 Stipulation for Dismissal with Prejudice and Order of Dismissal with Prejudice  
22 (Exhibit "3.a");

23 (b) Salt River Pima-Maricopa Indian Community v. H.S. Aguilar, et al., CIV  
24 82-2162 PHX PGR, United States District Court for the District of Arizona:  
25 Notice of Dismissal with Prejudice and Motion and Notice for Order of Dismissal  
26 and Order of Dismissal with Prejudice (Exhibit "3.b");

1 (c) United States of America on behalf of Salt River Pima-Maricopa Indian  
2 Community, et al. v. City of Phoenix, et al., CIV 82-2173-PHX WPC: Notice of  
3 Dismissal with Prejudice (Exhibit "3.c");

4 (d) Town of Gilbert v. The Roosevelt Water Conservation District, et al.,  
5 CIV 85-2600-PHX CAM: Stipulation and Joint Motion for Joinder of Additional  
6 Parties Plaintiff, Waiver of Amended Complaint and Time Within Which to Answer,  
7 Incorporation of Prior Answers to the Complaint and Order; Order; Stipulation  
8 for Dismissal with Prejudice; and Order of Dismissal (Exhibit "3.d");

9 (e) Gila River Adjudication: Stipulation and Judgment (Exhibit "3.e");

10 (f) Salt River Pima-Maricopa Indian Community v. The State of Arizona and  
11 Gene Hassell, Acting Commissioner of the Arizona State Land Department, No. CIV  
12 79-185 PHX: Stipulation for Dismissal with Prejudice and Order of Dismissal  
13 with Prejudice (Exhibit "3.f");

14 (g) Salt River Pima-Maricopa Indian Community v. Salt River Valley Water  
15 Users' Association, et al., No. CIV 83-2500 PHX WPC (the Exhibit is not executed  
16 because the suit has been dismissed) (Exhibit "3.g");

17 (h) City river water exchange contracts with the Secretary for delivery of  
18 water as provided in Paragraph 12.0 hereof (Exhibits "3.h.1 through 3.h.7");

19 (i) Amendment of RWCD CAP agricultural water service subcontract, and  
20 Superior Court decree validating such agricultural water service subcontract  
21 (Exhibit "3.i");

22 (j) Amendment of SRPMIC CAP water delivery contract to effectuate the  
23 Project Water Lease Agreements pursuant to Paragraph 19.0 hereof (Exhibit  
24 "3.j");

25 (k) RID, City of Phoenix, SRP and SRPMIC Water Exchange Agreement pursuant  
26 to Paragraph 11.0 hereof (Exhibit "3.k");

1 (l) Approval of storage and funding related to Plan 6 pursuant to Para-  
2 graph 7.0 hereof (Exhibit "3.l");

3 (m) Project Water Lease Agreements pursuant to Paragraph 19.0 hereof (Ex-  
4 hibits "3.m.1" through "3.m.7");

5 (n) SRP-RWCD extension agreement (Exhibit "3.n");

6 (o) Waiver and release of claims pursuant to Paragraph 17.0 hereof (Ex-  
7 hibit "3.o");

8 (p) Amendment to Bartlett Dam Agreement pursuant to Paragraph 9.0 hereof  
9 (Exhibit "3.p"); and

10 (q) The Assignment described in Paragraph 12.3 hereof (Exhibit "12.3").  
11

#### 12 4.0 ANNUAL WATER DUTY, CONSUMPTIVE USE, AND EXPECTED GROUNDWATER RECHARGE

13 The SRPMIC Reservation land to be irrigated with the water provided by this  
14 Agreement will be served with new, modern delivery facilities. Accordingly, a  
15 reduced water duty of 4.5 acre-feet per acre per year will be used for purposes  
16 of this Agreement. For purposes of calculating the safe yield groundwater with-  
17 drawal, the crop consumptive use will be 3.1 acre-feet per acre per year, and  
18 approximately 0.2 acre-feet per acre per year is assumed to be lost to future  
19 use by unrecoverable percolation. The safe yield groundwater withdrawal re-  
20 sulting from agricultural recharge is set at 1.2 acre-feet per acre per year or  
21 32,640 acre-feet per year when full agricultural development occurs, and will  
22 remain fixed for the term of this Agreement.  
23

#### 24 5.0 TOTAL WATER REQUIREMENT AND LIMITATION

25 Utilizing a water duty of 4.5 acre-feet per acre per year for the 14,500  
26 acres located within the exterior boundaries of the SRRD and for the 12,700

1 acres located north of the Arizona Canal, the annual water delivery requirement  
2 to SRPMIC measured at the turnouts from the CAP Granite Reef Aqueduct, turnouts  
3 from SRP main canals, and pump outlets from groundwater wells on the SRPMIC  
4 Reservation will be 65,250 acre-feet per year for the SRPMIC Reservation lands  
5 within the exterior boundaries of the SRRD and 57,150 acre-feet per year for the  
6 SRPMIC Reservation lands north of the Arizona Canal. With the exception of  
7 "Spill Water" described in Paragraph 14.0 hereof, the SRPMIC total annual water  
8 deliveries from all sources, including groundwater, shall be limited to 65,250  
9 acre-feet south of the Arizona Canal and 57,150 acre-feet north of the Arizona  
10 Canal.

#### 11 12 6.0 SOURCES OF WATER

13 Water for the settlement will be provided from the sources and in the quan-  
14 tities outlined in Tables 6.1 and 6.2 hereof and defined in Paragraphs 7.0, 8.0,  
15 9.0, 10.0, 11.0, 12.0 and 13.0 hereof.

16  
17 6.1 For irrigation or other use on 14,500 acres of SRPMIC Reservation lands  
18 located south of the Arizona Canal and within the exterior boundaries of the  
19 SRRD:

20 . . .  
21 . . .  
22 . . .  
23 . . .  
24 . . .  
25 . . .  
26 . . .

<u>Source</u>	<u>Estimated Quantity (AF/yr)</u>	<u>Reference Paragraph</u>
Kent Decree water	18,776	7. 0
Stored water from SRP	9,074	8. 0
Cities' river water exchange	20,000	12. 0
Groundwater pumped by SRPMIC (long term average)	<u>17,400</u>	13. 0
Sub-Total	65,250	

6.2 For irrigation or other use on SRPMIC Reservation lands located north or south of the Arizona Canal:

<u>Source</u>	<u>Estimated Quantity (AF/yr)</u>	<u>Reference Paragraph</u>
CAP contractual entitlement	13,300	19.0
Bartlett Dam Agreement water	20,000	9.0
RWCD	8,000	10.0
RID, City of Phoenix, SRP exchange water	10,000	11.0
Groundwater pumped by SRPMIC (long term average)	<u>5,850</u>	13.0
Sub-Total	<u>57,150</u>	
TOTAL	<u>122,400</u>	

6.3 Effluent developed on the SRPMIC Reservation shall be used for such purposes as SRPMIC may determine and shall not be included in the quantity restriction of this Agreement.

6.4 Except for SRPMIC's CAP contractual entitlement, the priority of the water delivered to SRPMIC from the sources listed in Paragraphs 6.1 and 6.2 hereof shall be the priority of those sources as determined in the Gila River Adjudication.

1  
2 7.0 KENT DECREE WATER  
3

4 7.1 Historically, SRPMIC has used only a part of its Kent Decree entitlement to  
5 the normal flow of the Salt and Verde Rivers due to demand being less than  
6 available supply during parts of the year. SRPMIC is unable to store surplus  
7 portions of its normal flow entitlements for future use. In order that SRPMIC  
8 may use more fully its Kent Decree water entitlement, the United States will  
9 designate for use by SRPMIC for storage of Kent Decree water 7,000 acre-feet  
10 (hereinafter "Designated Space") of the Additional Active Conservation  
11 Capacity. The SRPMIC will be assessed evaporation losses using the same formula  
12 as arrived at under Plan 6 for the Plan 6 participants as provided in Paragraph  
13 5.26(b) of Exhibit "C" of the Plan 6 Agreement, with the participation of  
14 SRPMIC. In order to assure that Additional Active Conservation Capacity is  
15 available to SRPMIC, the Secretary agrees that each annual budget estimate sub-  
16 mitted to the Executive Office of the President of the United States by the  
17 Department of the Interior shall include sufficient funding, in accordance with  
18 the Plan 6 Agreement as amended or modified. SRPMIC agrees to support the  
19 authorization for funding and modification of Roosevelt Dam as an integral part  
20 of the Plan 6 facilities.

21  
22 7.2 The Designated Space will be for seasonal re-regulation only (no annual  
23 carry over past October 1) and will be made available to accomplish other Plan 6  
24 purposes when not needed to re-regulate SRPMIC's Kent Decree entitlement. No  
25 part of the Plan 6 or SRP water supply will accrue to the United States or the  
26 SRPMIC under this Paragraph 7.0. The costs of the Designated Space shall be

1 non-reimbursable, and the United States will forgive a portion of the non-  
2 Federal funding obligation associated with the Designated Space. The amount of  
3 the costs so forgiven will be the ratio of number of acre-feet of Designated  
4 Space to the Additional Active Conservation Capacity multiplied by the amount  
5 the cities referred to in the Plan 6 Agreement have agreed to contribute for  
6 that capacity under the Plan 6 Agreement.

7  
8 7.3 Chandler, Glendale, Mesa, Phoenix, Scottsdale, Tempe, the United States,  
9 CAWCD, and SRP will cooperate with SRPMIC in obtaining any necessary State or  
10 Federal approval for joint use of the Designated Space or existing temporary  
11 space in SRP reservoirs consistent with this Paragraph 7.0. All parties to this  
12 Agreement shall refrain from initiating or supporting any legislative, adminis-  
13 trative, or judicial proceeding challenging Plan 6. The Cities of Chandler,  
14 Glendale, Mesa, Phoenix, Scottsdale and Tempe, the United States, CAWCD, and SRP  
15 agree that to the extent the provisions of Paragraphs 7.1, 7.2, and 7.3 hereof  
16 are contrary to the provisions of the Plan 6 Agreement, Paragraphs 7.1 through  
17 7.3 hereof shall control.

18  
19 7.4 SRP will provide temporary storage for the 7,000 acre-feet referred to in  
20 Paragraph 7.1 hereof in its existing reservoirs on the Salt River for SRPMIC  
21 Kent Decree water until the earlier of:

22 (a) the construction of Additional Active Conservation Capacity is com-  
23 pleted;

24 (b) a declaration is made by the United States that such Capacity will not  
25 be constructed; or

26 (c) December 31, 2005;

1 Provided, however, that this temporary storage entitlement shall always be sub-  
2 ject to spill as provided in Paragraph 21.9 hereof and that evaporation will be  
3 charged monthly at the rate of one-half of one percent of the Kent Decree stored  
4 water balance at the end of each month. The temporary storage will be for  
5 seasonal re-regulation only (no annual carry over past October 1).  
6

7 7.5 In the event of the occurrence of either condition described in Paragraph  
8 7.4(b) or 7.4(c) hereof, and to satisfy the requirements of Paragraph 7.1 here-  
9 of, the United States will provide water from sources other than the Salt or  
10 Verde Rivers at no cost or expense to SRPMIC and at no cost or expense to the  
11 non-federal parties to the Plan 6 Agreement. The expenditure or advance of  
12 money, the performance of any work, or the supply of substitute water by the  
13 United States under this Paragraph 7.5 which may require appropriation of money  
14 by the Congress or the allotment of funds shall be contingent upon such appro-  
15 priation or allotment being made.  
16

17 7.6 The Kent Decree water will be used only on SRPMIC Reservation lands south  
18 of the Arizona Canal and inside the exterior boundary of the SRRD.  
19  
20

## 21 8.0 ADDITIONAL STORED WATER

22

23 8.1 "Stored Water" is defined as that amount of water delivered to SRPMIC by  
24 SRP from SRP reservoirs up to 9,074 acre-feet per year pursuant to Paragraphs  
25 6.1 and 8.2 hereof.

26 . . .



1 "Additional Stored Water" is defined as that amount of SRP water delivered  
2 to SRPMIC by SRP from SRP reservoirs in excess of 9,074 acre-feet per year pur-  
3 suant to Paragraphs 8.2 through 8.7 hereof.

4 "Net SRP Reservoir Storage" on Exhibit "8.1" to this Agreement is defined  
5 as (a) water actually stored in SRP reservoirs (existing as of the date of this  
6 Agreement) on May 1st of each year less water stored for SRPMIC, the Fort  
7 McDowell Mohave-Apache Indian Community, RWCD, Phelps Dodge Corporation, City of  
8 Phoenix, Buckeye Irrigation District and storage related to Plan 6; and (b) the  
9 sum of surface water released from existing SRP reservoirs during the 12 months  
10 preceding May 1 which is (i) diverted by SRP under SRP's rights as determined in  
11 the Gila River Adjudication for use on lands not receiving such waters prior to  
12 the date of this Agreement, (ii) delivered pursuant to a contract, other than  
13 those deliveries permitted pursuant to the Plan 6 Agreement, this Agreement, or  
14 a Fort McDowell Indian Community settlement agreement, by SRP outside the boun-  
15 daries of the SRRD in excess of the maximum deliveries required under current  
16 contract arrangements with SRP as of February 12, 1988, and any renewals  
17 thereof; and (iii) water, other than Spill Water as defined in Paragraph 14.0  
18 hereof and water available to SRPMIC under Paragraph 6.0 of this Agreement,  
19 diverted from existing SRP conservation space and first used for a groundwater  
20 recharge or storage facility operated pursuant to permits for those purposes  
21 under State law, in excess of replacement of that water in the SRP reservoirs.  
22 "Net SRP Reservoir Storage" shall not include SRP surface water released from  
23 existing SRP reservoirs or removed upstream from such reservoirs during the 12  
24 months preceding May 1, which is delivered or diverted for use outside the SRRD  
25 so long as such deliveries or diversions are in exchange on at least an acre-  
26 foot for acre-foot basis for other water delivered to SRP for use on its

1 shareholders' lands within the SRRD. Deliveries of surface water from the Salt  
2 and Verde Rivers to the Gila River Indian Community by SRP during the 12 months  
3 preceding May 1, pursuant to a written settlement agreement, may be used by  
4 SRPMIC to increase the level of SRP Net Reservoir Storage on May 1 to a maximum  
5 level of 1.5 million acre-feet. Net SRP Reservoir Storage will not exceed SRP's  
6 rights, as determined in the Gila River Adjudication, for SRP storage facilities  
7 existing as of the date of this Agreement.

8 Stored Water and Additional Stored Water will be used only on SRPMIC Reser-  
9 vation lands south of the Arizona Canal within the exterior boundaries of SRRD.

10  
11 8.2 SRPMIC will be delivered annually Stored Water from 0 to 9,074 acre-feet at  
12 Net SRP Reservoir Storage levels on May 1 of 350,000 to 1.5 million acre-feet in  
13 accordance with Exhibit "8.1" hereof. At Net SRP Reservoir Storage levels above  
14 1.5 million acre-feet on May 1, SRPMIC shall be entitled to receive Additional  
15 Stored Water in accordance with Exhibit "8.1" hereof and conditioned as provided  
16 in Paragraphs 8.3 through 8.7 hereof. Maximum demands on SRP by SRPMIC for  
17 Stored Water will be no more than 658 acre-feet in 1987 and will increase on a  
18 straight line basis to 9,074 acre-feet by the year 2000. The first delivery of  
19 such water will be made, on the order of SRPMIC, during the calendar year in  
20 which this Agreement becomes enforceable, and shall be of an amount that re-  
21 flects the phase-in of entitlement under this Paragraph 8.2. The water year  
22 under this Paragraph 8.0 shall be May 1 through the following April 30.

23  
24 8.3 As conditions to receiving Additional Stored Water SRPMIC shall:

25  
26 8.3.1 Establish by May 1 of each year that it will reduce groundwater

1 pumping on its lands south of the Arizona Canal and within the exterior boun-  
2 daries of the SRRD to not more than 17,400 acre-feet on an annualized basis from  
3 May 1 of that year through April 30 of the next year and that it shall there-  
4 after further reduce its actual groundwater pumping on the SRPMIC Reservation by  
5 one acre-foot for each acre-foot of Additional Stored Water it receives from  
6 SRP.

7  
8 8.3.2 Designate on or before May 1 of each year the specifically described  
9 acres within the SRPMIC Reservation which will actually be served during the  
10 subsequent 12 months with water from all sources. The designation shall be in  
11 the form of a map depicting the acres, the projected source of irrigation water  
12 for those acres, and a tabulation distinguishing acres north and south of the  
13 Arizona Canal. The designation shall be certified by a resolution of the SRPMIC  
14 Council which will further certify that SRPMIC groundwater pumping for the de-  
15 signated acres will be reduced by one acre-foot for each acre-foot of Additional  
16 Stored Water it receives.

17  
18 8.3.3 Maintain measuring devices which will permit SRP to verify the acre-  
19 feet of groundwater pumped and surface water received by SRPMIC during the  
20 previous May 1 through April 30 period and will provide this data to SRP as a  
21 part of the certifying resolution of its Council.

22  
23 8.4 The allocation of Additional Stored Water which may be received by SRPMIC  
24 from SRP for the 12-month period May 1 through April 30 of each year will be the  
25 lesser of:

26 . . .

1 (a) the amount of Additional Stored Water derived from Net SRP Reservoir  
2 Storage as provided in Paragraph 8.2 hereof; or,

3 (b) the irrigation water demand which cannot be satisfied by using all  
4 surface water sources identified in Paragraphs 6.1 and 6.2 hereof, except for  
5 SRPMIC CAP water, for which groundwater would be pumped to satisfy that demand  
6 if Additional Stored Water were not available. Demand is defined as designated  
7 acres, as provided in Paragraph 8.3.2 hereof, multiplied by 4.5 acre-feet per  
8 acre.

9  
10 8.5 In the event that the amount of groundwater pumped on the SRPMIC Reserva-  
11 tion is not reduced as required by this Paragraph 8.0 or the acres designated by  
12 SRPMIC are not actually served with irrigation water, the next future Additional  
13 Stored Water allocations provided to SRPMIC under Paragraph 8.2 hereof will be  
14 reduced by a like amount. Failure by SRPMIC to designate the acres pursuant to  
15 Paragraph 8.3 hereof and to provide the SRPMIC Council resolution to SRP by May  
16 1 of any year shall relieve SRP of any obligation to provide SRPMIC with Addi-  
17 tional Stored Water for the next 12 month period.

18  
19 8.6 In the event SRPMIC constructs water treatment plants on the SRPMIC Reser-  
20 vation capable of treating surface water for municipal and industrial (M&I)  
21 delivery within the SRRD on the SRPMIC Reservation, the acre-foot for acre-foot  
22 reduction of groundwater use in exchange for Additional Stored Water as provided  
23 in Paragraphs 8.2 and 8.3.1 hereof may result from reduced groundwater pumping  
24 for M&I use on the SRPMIC Reservation, rather than from reduced pumping for  
25 agricultural irrigation. The limits set forth in Paragraph 8.4 hereof on total  
26 Additional Stored Water available to the SRPMIC shall not be affected by a

1 change in groundwater use within the SRPMIC Reservation decreasing agricultural  
2 irrigation use and increasing M&I use.

3  
4 8.7 For the purposes of this Agreement, "Additional Allotment" as described on  
5 Exhibit "8.1" hereof at any given Net SRP Reservoir Storage amount will be  
6 multiplied by 11,042 acres to determine the Stored Water and Additional Stored  
7 Water available to SRPMIC, subject to the above provisions.

8  
9 9.0 BARTLETT DAM WATER

10  
11 9.1 The Bartlett Dam Agreement shall be amended to provide that SRP shall in-  
12 crease the total SRPMIC allotment of developed water under the Bartlett Dam  
13 Agreement to 20,000 acre-feet on December 31 of any calendar year in which all  
14 of the following three conditions occur:

15  
16 9.1.1 For at least 292 days of the calendar year the total water stored in  
17 SRP reservoirs on the Verde River is more than the storage capacity of Bartlett  
18 Dam Reservoir, which, for purposes of this Agreement, is deemed to be 178,186  
19 acre-feet, as periodically adjusted by SRP for silt losses;

20  
21 9.1.2 The total SRPMIC allotment of developed water under the Bartlett Dam  
22 Agreement generated during the calendar year is less than 7,000 acre-feet;

23  
24 9.1.3 The total SRPMIC allotment of developed water under the Bartlett Dam  
25 Agreement existing at the end of the calendar year is less than 20,000 acre-  
26 feet.

1  
2 9.2 Article 4 of the Bartlett Dam Agreement shall be deleted and replaced with  
3 the following language:

4  
5 ARTICLE 4  
6 OPERATION OF STORAGE WORKS

7 The works constructed on Verde River shall be  
8 operated and maintained by the Association. The Association may at any time store any part or all of Flow of  
9 Verde River in the reservoir, and may at any time release  
10 any quantity of water from the reservoir or it may permit  
11 the river to flow through the reservoir without regulation.

12  
13 9.3 A new Article 15 shall be added to the Bartlett Dam Agreement, providing as  
14 follows:

15 Except for claims arising after the effective date of  
16 this Amendment to enforce the Bartlett Dam Agreement as  
17 amended, the United States waives all claims which the  
18 United States may have, in its own right or on behalf of  
19 SRPMIC, against any person based upon

20 (A) water rights or injuries to water rights of  
21 SRPMIC, its members or allottees under the Bartlett Dam  
22 Agreement; or

23 (B) water rights or injuries to water rights held by  
24 the United States on behalf of SRPMIC, its members or  
25 allottees under the Bartlett Dam Agreement.

26  
27 9.4 Except as provided in Paragraphs 9.1, 9.2, and 9.3 hereof, all terms and  
28 conditions of the Bartlett and Horseshoe Dam Agreements shall remain unchanged  
29 and in full force and effect.

30  
31 9.5 SRP shall provide monthly reports to SRPMIC showing the balance of SRPMIC's  
32 allotment of developed water as of the end of each month.

1     10.0 RWCD RIGHTS AND WATER TRANSFER TO SRPMIC

2  
3     10.1 (a) The parties to this Agreement ratify, confirm and declare to be valid  
4     that agreement between SRP and RWCD dated October 24, 1924, and approved by the  
5     Secretary on December 2, 1924, and all amendments and modifications thereto.

6             (b) The parties to this Agreement, except for the United States acting as  
7     trustee for Indian tribes other than SRPMIC, recognize and confirm the entitle-  
8     ment of RWCD to surface water from the Salt and Verde Rivers and agree not to  
9     object to, dispute or challenge, in the Gila River Adjudication, or otherwise,  
10    such rights, which rights are evidenced by, described, stated, confirmed or  
11    established in the following documents and instruments: the agreement between  
12    SRP and RWCD dated October 24, 1924, and approved by the Secretary on  
13    December 2, 1924; the stipulation dated September 18, 1940, the decision dated  
14    on or about September 18, 1940, the judgment dated September 19, 1940, and the  
15    order dated September 19, 1940, in W.C. Lehane v. Salt River Valley Water Users'  
16    Association, et al., Cause No. 32021-C in the Superior Court of Maricopa County,  
17    Arizona; and the agreement between SRP and RWCD dated September 9, 1954.

18  
19    10.2 The parties to this Agreement, except for the United States acting as  
20    trustee for Indian tribes other than SRPMIC, recognize and confirm that the  
21    measure of RWCD's surface water entitlement under the documents and instruments  
22    identified in Paragraph 10.1 hereof is five and six-tenths percent (5.6%) of the  
23    sum of all surface water , except Spill Water, diverted at Granite Reef Dam or  
24    other points on the Salt and Verde Rivers (a) for use on the lands within the  
25    SRRD described in Exhibit "10.2" to this Agreement, (b) for distribution by

26

1 Glendale, Mesa, Phoenix and Tempe, or other cities, or their successors, to the  
2 lands within the SRRD listed on Exhibit "10.2" to this Agreement, and (c) all  
3 surface water delivered to SRP below Granite Reef Dam for use on the lands with-  
4 in the SRRD listed on Exhibit "10.2" to this Agreement in exchange for surface  
5 water which otherwise would have been diverted at Granite Reef Dam; minus the  
6 first 19,427 acre-feet of surface water delivered by SRP each year to the City  
7 of Phoenix domestic water treatment plants. Except as provided in this Para-  
8 graph 10.2, all rights and obligations contained in the documents and instru-  
9 ments referred to in Paragraph 10.1 hereof shall remain in full force and  
10 effect. RWCD's entitlement as set forth in this paragraph shall not include any  
11 yield from Additional Active Conservation Capacity.

12  
13 10.3 RWCD has executed a CAP agricultural water service subcontract which pro-  
14 vides for the conversion of CAP agricultural water to CAP M&I water under cir-  
15 cumstances stated in the subcontract. The parties agree that this right of  
16 conversion shall not be exercised within the areas jointly within RWCD and the  
17 CAP planning areas of Chandler, Gilbert or Mesa, as used by the Arizona Depart-  
18 ment of Water Resources ("DWR") in recommending to the Secretary the initial M&I  
19 water allocations to those Cities. A map for Chandler, Mesa, and Gilbert  
20 depicting each such CAP planning area is attached to this Agreement as Exhibit  
21 "10.3." Provided, however, such conversion right may be exercised within such  
22 CAP planning area at any time or times after it is determined by the Secretary  
23 that any portion of surface water appurtenant to the land within such CAP plan-  
24 ning area is permanently unavailable for use on such land, to the extent permit-  
25 ted by the following formula:

26 . . .



1 For a given acre, conversion =

1 acre-foot per acre minus (A plus B).

2 A =

the average amount of surface water (after the permanent unavailability of surface water has been determined pursuant to RWCD's agricultural water service subcontract) actually available to each of RWCD's eligible acres not including Spill Water and surface water RWCD has agreed to contribute to this Settlement (expressed in acre-feet per acre).

7 B\* =

the amount of CAP M&I water available to an RWCD eligible acre by virtue of the initial M&I allocations to Chandler, Gilbert, or Mesa, plus the amount of permanently available replacement surface water per acre, if any, received by Chandler, Gilbert or Mesa from any water settlement involving the Fort McDowell Indian Community ("FMIC"). B = C/D (expressed in acre-feet per acre).

13 C =

the initial CAP M&I allocation for the applicable city or town, plus the amount of permanently available replacement surface water, if any, received by Chandler, Gilbert or Mesa from any water settlement involving FMIC (expressed in acre-feet).

17 D =

the number of acres within the CAP planning area used by DWR in recommending to the Secretary the initial M&I allocation to the applicable city or town (expressed in acres).

20 \*Note: B must be determined with reference to the allocation of the  
21 city or town associated with the planning area wherein con-  
22 version is proposed to occur. B will not be the same number  
for each acre within RWCD.

23 For the purpose of the foregoing formula, "permanently available" shall mean the  
24 availability of such replacement surface water for a term of years or an ex-  
25 tended term of years of substantially the same length as the term of the Project  
26 Water Lease Agreements described in Paragraph 19.0 hereof. Water received by

1 the Cities of Chandler and Mesa and by the Town of Gilbert pursuant to Para-  
2 graphs 12.0 and 19.0 hereof shall not be considered to be "permanently  
3 available" for purposes of the foregoing formula.

4  
5 The parties agree that with respect to that area within the boundaries of  
6 RWCD but outside of the CAP planning areas used by DWR in recommending to the  
7 Secretary the initial M&I allocations for Chandler, Gilbert, and Mesa, which  
8 area is shown on Exhibit "10.3" hereto, CAP agricultural water may be converted  
9 to CAP M&I use to the extent permitted by the following formula:

10 For a given acre, conversion = 1 acre-foot per acre minus A (as defined  
11 above)

12 The Secretary shall revise the subcontract of the RWCD for agricultural water  
13 service from the CAP to include an addendum substantially in the form of Exhibit  
14 "3.i" to this Agreement, which Exhibit "3.i" is erroneously referred to in the  
15 Act as Exhibit "3.1", and shall execute the subcontract as revised. Notwith-  
16 standing any other provision or law, the Secretary shall approve the conversions  
17 of agricultural water to M & I uses authorized by the addendum at such time or  
18 times as the conditions authorizing such conversion, as set forth in the  
19 addendum, are found to exist.

20  
21 10.4 The Cities of Chandler and Mesa hereby consent to become parties to that  
22 lawsuit styled as Town of Gilbert v. The Roosevelt Water Conservation District,  
23 et al., pending in United States District Court as Cause No. CIV-85-2600-PHX-  
24 CAM. The parties to this Agreement hereby approve the RWCD CAP agricultural  
25 water service subcontract, as modified by this Agreement; all parties to this  
26 Agreement who are also parties to Cause No. CIV-85-2600-PHX-CAM agree to execute

1 the documents which constitute Exhibit "3.d" to this Agreement requiring their  
2 signature and to take all such steps as are necessary to cause Cause No. CIV-85-  
3 2600 PHX-CAM to be dismissed with prejudice.

4  
5 10.5 During the term and extended term of the agreements referred to in Para-  
6 graph 10.1 hereof, RWCD hereby directs SRP to deliver to SRPMIC 8,000 acre-feet  
7 per calendar year from RWCD's entitlement as defined in Paragraph 10.2 hereof.  
8 SRPMIC shall take delivery of its share of RWCD's entitlement in the period from  
9 January 1 through September 30 of each year. Subject to SRPMIC's maximum 8,000  
10 acre-foot entitlement hereunder, SRPMIC shall be entitled to divert and use up  
11 to 1,700 acre-feet per month of RWCD's entitlement during such period, provided  
12 that water not diverted and used by SRPMIC in any month shall be available for  
13 use by RWCD. SRPMIC's entitlement under this Paragraph 10.5 shall not be  
14 carried over from month-to-month nor have storage rights for annual carryover.

15 In the event insufficient water is available under RWCD's entitlement to  
16 satisfy both the entitlement of SRPMIC under this Paragraph 10.5 and the en-  
17 titlement of the FMIC under any settlement agreement to which RWCD and FMIC are  
18 parties, RWCD's entitlement shall be apportioned pro rata between SRPMIC and  
19 FMIC provided that SRPMIC shall receive thereby no less than 71.4% of the water  
20 available, unless SRPMIC and FMIC otherwise agree. RWCD and SRP shall be noti-  
21 fied of any such agreement.

22  
23 10.6 RWCD's direction for the delivery of water to SRPMIC pursuant to the terms  
24 of Paragraph 10.5 hereof shall be binding upon its successors and assigns. The  
25 parties to this Agreement, except for the United States acting as trustee for  
26 Indian tribes other than SRPMIC, acknowledge that RWCD's water rights as de-

1 scribed in the documents and instruments referred to in Paragraph 10.1 hereof  
2 are appropriative rights and are appurtenant to RWCD lands. Should any other  
3 entity succeed to RWCD's entitlement, it shall assume RWCD's rights and obliga-  
4 tions to SRPMIC under Paragraph 10.5 hereof. RWCD and SRP agree that the term  
5 of the agreements described in Paragraph 10.1 hereof shall be extended in accor-  
6 dance with the provisions of Exhibit "3.n" hereto. Nothing in this Agreement  
7 shall be construed as a grant of rights between SRP and RWCD for the use of SRP  
8 facilities to deliver RWCD's entitlement.

9 It is the purpose of Paragraphs 10.1, 10.2, and 10.5 hereof, and of this  
10 Paragraph 10.6, to describe RWCD's water right and the circumstances under which  
11 SRPMIC shall be entitled to the delivery of water from that water right. All  
12 parties to this Agreement recognize that the circumstances and arrangements  
13 pursuant to which water is delivered to RWCD may change over time, RWCD may  
14 cease to exist, or RWCD's successors may make different arrangements for the  
15 delivery of the water to which these Paragraphs apply. Notwithstanding any such  
16 change of circumstances or arrangements, RWCD's ceasing to exist, or such dif-  
17 ferent arrangements made by RWCD's successors, SRPMIC shall be entitled to con-  
18 tinue receiving water pursuant to this Paragraph 10.0.

19 11.0 RID CONTRACT ENTITLEMENT, RID-PHOENIX-SRP EXCHANGE, AND WATER TRANSFER TO  
20 SRPMIC

21  
22 11.1 The parties to this Agreement recognize, ratify, confirm and declare to be  
23 valid the agreement between SRP and Carrick and Mangham Agua Fria Lands and  
24 Irrigation Company (predecessor of RID) dated August 25, 1921, and approved by  
25 the Secretary on October 26, 1921; the agreement between SRP and RID dated  
26 February 3, 1927, and approved by the Secretary on February 12, 1927; and the

1 agreement between SRP and RID dated May 31, 1950, and approved by the Secretary  
2 on October 9, 1950.

3  
4 11.2 RID, the City of Phoenix, SRPMIC and SRP have entered into or will enter  
5 into an agreement, identified as Exhibit "3.k" hereof and incorporated herein by  
6 this reference, setting forth the respective interests, obligations and respon-  
7 sibilities of RID, the City of Phoenix, SRPMIC and SRP in and to the water  
8 exchange described herein as the "RID Exchange."

9  
10 11.3 The SRP year end accounting for water deliveries to SRPMIC will exhaust the  
11 following accounts prior to any charge against RID Exchange credits:

12 (a) Kent Decree water;

13 (b) Stored Water and Additional Stored Water as provided in Paragraph  
14 8.2 hereof;

15 (c) Bartlett Dam water as provided in the Bartlett Dam Agreement as  
16 amended and supplemented by Paragraph 9.0 hereof;

17 (d) RWCD water as provided in Paragraph 10.5 hereof; and

18 (e) Cities' River Water Exchange water as provided in Paragraphs  
19 12.8.1 through 12.8.5 hereof;

20 Provided, however, that this commitment does not require that the five foregoing  
21 water credit accounts be drawn upon in the order listed or in any other parti-  
22 cular order. SRP will charge SRPMIC credits in accordance with this Paragraph  
23 11.3 annually, and on an interim monthly basis as necessary to implement Para-  
24 graphs 12.8.1, 12.8.2, 12.8.3, 12.8.4, 12.9, 12.10 and 12.11 hereof.

25 . . .

26 . . .

1    11.4 There will be no charge to SRPMIC, except as provided in Paragraphs  
2    15.1.d. and 15.5 hereof, for RID Exchange water delivered to turnout points on  
3    the Arizona Canal or South Canal .  
4

5    11.5 All parties to this Agreement agree that the RID Exchange is in the best  
6    interest of all parties to this Agreement, since it will facilitate the settle-  
7    ment of claims which all parties desire to have resolved. The affected parties  
8    recognize that certain aspects of the RID Exchange will require Federal, State  
9    or other governmental approvals before the exchange can be accomplished; there-  
10   fore, the parties agree to support all applications for permits and approvals  
11   filed by the City of Phoenix, RID, SRP or SRPMIC regarding the exchange and  
12   agree to use their best efforts to expedite the review and approval of such  
13   permits. The State of Arizona specifically agrees that it will act upon any  
14   request for permit or approval requested by the City of Phoenix, RID, SRP or  
15   SRPMIC within the statutorily required time frame. If there is a requirement by  
16   State law for a hearing upon any request for approval or permit, the State  
17   agrees to devote sufficient staff and resources of the State to such hearing  
18   process, such that a hearing is completed in a reasonable time.  
19

20   11.6 The parties agree that if the RID Exchange should become impossible to  
21   implement and perform due to the inability to obtain and maintain required  
22   Federal, State or other governmental approvals or for any other reason beyond  
23   the control of RID, the City of Phoenix, SRP or SRPMIC, then the rights and  
24   obligations of the parties set forth in Exhibit "3.k" hereof shall be void and  
25   of no force and effect. All other of the rights and obligations of the parties  
26   . . .

1 to this Agreement , including those set forth in Paragraph 11.1 hereof, shall  
2 remain in full force and effect.  
3

4 11.7 It is expressly anticipated by the parties that this RID Exchange will  
5 gradually phase out as SRP shareholders' agricultural lands receiving the RID  
6 Exchange water are urbanized or upon expiration of RID's contractual relation-  
7 ship with SRP as described in Paragraph 11.1 hereof, whichever occurs first.  
8 SRPMIC water demand unfulfilled because of this phase-out or because of insuf-  
9 ficient credits in the delivery account in any year will be satisfied, if neces-  
10 sary, by additional groundwater pumping by SRPMIC on its reservation.  
11

12 11.8 In the event this RID Exchange fails for any reason to be implemented pur-  
13 suant to the terms of this Agreement and a later exchange under essentially the  
14 same terms and conditions is negotiated between Phoenix, RID and SRP then SRPMIC  
15 shall have the right to participate in such exchange on essentially the same  
16 terms and conditions as set forth in this Paragraph 11.0; provided, however,  
17 SRPMIC's participation in such an agreement shall end on December 30, 2050.  
18

19 12.0 CITIES' RIVER WATER EXCHANGE  
20

21 12.1 The United States shall obtain, from willing sellers, rights to 22,000  
22 acre-feet of annual consumptive use of water from the mainstream of the  
23 Colorado River in the State of Arizona with a Colorado River priority predating  
24 September 30, 1968, and which was not included in the determination of water  
25 supplies available to the CAP. The Secretary shall make such Colorado River  
26 . . .

1 water available for delivery as provided in Paragraphs 12.2, 12.5 and 12.6  
2 hereof.

3  
4 12.2 The Colorado River water obtained by the United States pursuant to Para-  
5 graph 12.1 hereof shall be made available for delivery to the following parties  
6 in amounts not exceeding the following:

7	(a) City of Chandler	-	4,278 acre-feet per year;
8	(b) City of Glendale	-	3,000 acre-feet per year;
9	(c) City of Scottsdale	-	100 acre-feet per year;
10	(d) City of Tempe	-	100 acre-feet per year;
11	(e) City of Mesa	-	2,760 acre-feet per year;
12	(f) City of Phoenix	-	5,000 acre-feet per year;
13	(g) Town of Gilbert	-	<u>6,762</u> acre-feet per year;
14	TOTAL	-	22,000 acre-feet per year.

15  
16 12.3 RWCD shall assign to the following parties from its entitlement to CAP  
17 agricultural water under its CAP agricultural water service subcontract an  
18 amount of CAP agricultural water to be delivered to the respective points of  
19 delivery in amounts not exceeding the following, after first providing for de-  
20 livery to RWCD, at RWCD's point of delivery, of 8,000 acre-feet of such CAP  
21 agricultural water:

22 . . .  
23 . . .  
24 . . .  
25 . . .  
26 . . .



1 (a) City of Chandler - 972 acre-feet per year;  
2 (b) City of Glendale - 682 acre-feet per year;  
3 (c) City of Scottsdale - 23 acre-feet per year;  
4 (d) City of Tempe - 23 acre-feet per year;  
5 (e) City of Mesa - 627 acre-feet per year;  
6 (f) City of Phoenix - 1,136 acre-feet per year;  
7 (g) Town of Gilbert - 1,537 acre-feet per year;  
8 TOTAL - 5,000 acre-feet per year.

9 Such assignment shall be made in accordance with and governed by the terms and  
10 conditions of the agreement attached hereto as Exhibit "12.3" among the United  
11 States, CAWCD, RWCD, and the above cities and town (the "Cities").  
12

13 12.4 In accordance with the agreement attached hereto as Exhibit "12.3," when  
14 RWCD's entitlement to CAP agricultural water is so reduced as a result of a  
15 reduction in RWCD's eligible acreage that RWCD can no longer provide 3,000 acre-  
16 feet of water to the Cities in a normal water supply year pursuant to the  
17 assignment referred to in Paragraph 12.3 hereof, the Secretary shall make  
18 available for delivery to the Cities at their respective points of delivery from  
19 the total supply of CAP agricultural water otherwise available for delivery  
20 from the CAP an amount of water equal to the difference between (a) 3,000 acre-  
21 feet and (b) the amount of water assigned to the Cities pursuant to the assign-  
22 ment referred to in Paragraph 12.3 hereof. The amount of water to be delivered  
23 to each of the Cities pursuant to this Paragraph 12.4 shall not exceed the  
24 following:

25 . . .  
26 . . .

1	(a) City of Chandler	-	583 acre-feet per year;
2	(b) City of Glendale	-	409 acre-feet per year;
3	(c) City of Scottsdale	-	14 acre-feet per year;
4	(d) City of Tempe	-	14 acre-feet per year;
5	(e) City of Mesa	-	376 acre-feet per year;
6	(f) City of Phoenix	-	682 acre-feet per year;
7	(g) Town of Gilbert	-	<u>922</u> acre-feet per year;
8	TOTAL	-	3,000 acre-feet per year.

10 12.5 Prior to the enforceability date of this Agreement, the relative amounts of  
 11 water to be made available to each of the Cities pursuant to Paragraphs 12.2,  
 12 12.3 and 12.4 hereof may be adjusted by mutual agreement of such Cities. All  
 13 water referred to in Paragraphs 12.2, 12.3 and 12.4 hereof shall be delivered  
 14 through CAP facilities pursuant to contracts, perpetual in term, among the  
 15 United States, CAWCD, and each of the respective Cities, which contracts are  
 16 attached hereto as Exhibits "3.h.1" through "3.h.7." On and after the enforce-  
 17 ability date of this Agreement, any assignment of rights under the contracts  
 18 attached hereto as Exhibits "3.h.1" through "3.h.7" shall require the prior  
 19 approval of CAWCD and the United States. For the purpose of determining the  
 20 allocation and repayment of costs of the CAP as provided in Article 9.3 of the  
 21 CAP Master Repayment Contract, the costs associated with the delivery of water  
 22 pursuant to the contracts attached hereto as Exhibits "3.h.1" through "3.h.7"  
 23 shall be non-reimbursable, and such costs shall be excluded from CAWCD's repay-  
 24 ment obligation.

25 . . .

26 . . .

1 12.6 Except as provided in Paragraph 12.13 hereof concerning CAP water service  
2 capital charges, all water to be made available to the Cities pursuant to Para-  
3 graphs 12.2, 12.3 and 12.4 hereof will be made available to the Cities pursuant  
4 to contracts with the Secretary conforming substantially to the Cities' exist-  
5 ing CAP M&I water service subcontracts. All rights to Colorado River water  
6 obtained by the United States pursuant to Paragraph 12.1 hereof shall retain  
7 their relative priority as among users of main stream Colorado River supplies;  
8 provided, however, that such water supplies shall be made available by the Sec-  
9 retary only for non-Indian M&I use in accordance with the contracts attached  
10 hereto as Exhibits "3.h.1" through "3.h.7."

11  
12 12.7 During the terms of the contracts attached hereto as Exhibits "3.h.1"  
13 through "3.h.7," SRP will deliver to SRPMIC, as provided in Paragraphs 12.8  
14 through 12.12 hereof, up to 20,000 acre-feet of surface water annually for use  
15 only on SRPMIC Reservation lands south of the Arizona Canal and within the ex-  
16 terior boundaries of the SRRD.

17  
18 12.8.1 Except as provided in Paragraph 12.10 hereof, SRPMIC shall be entitled  
19 to the first 20,000 acre-feet of stored and developed water or, if sufficient  
20 stored and developed water is not available, assessment water allocated annual-  
21 ly by SRP to the SRP assessed and townsite lands included in the Cities' indivi-  
22 dual domestic water accounts maintained by SRP. The amount of stored and de-  
23 veloped and assessment water to be deducted from each City's domestic water  
24 account in any year shall not exceed the following:

25 . . .

26 . . .

- 1 (a) 4,278 acre-feet from the City of Chandler,  
2 (b) 3,000 acre-feet from the City of Glendale,  
3 (c) 100 acre-feet from the City of Scottsdale,  
4 (d) 100 acre-feet from the City of Tempe,  
5 (e) 2,760 acre-feet from the City of Mesa,  
6 (f) 3,000 acre-feet from the City of Phoenix, and  
7 (g) 6,762 acre-feet from the Town of Gilbert;  
8 20,000 acre-feet total.

9  
10 12.8.2 Except as provided in Paragraph 12.8.3 hereof, at the beginning of  
11 each calendar year SRP will deduct each City's share of SRPMIC's 20,000 acre-  
12 feet entitlement, as described in Paragraph 12.8.1 hereof, from the particular  
13 City's domestic water account maintained by SRP, and transfer that share to a  
14 special account maintained for this purpose by SRP on behalf of SRPMIC (the  
15 "SRPMIC City Exchange Water Account"). SRP shall deduct first each City's share  
16 of SRPMIC's 20,000 acre-feet entitlement from that City's allocation of SRP  
17 stored and developed water included in its domestic water account. In the event  
18 the amount of stored and developed water allocated by SRP to the SRP assessed  
19 and townsite lands included in a City's domestic water account is less than that  
20 City's share of SRPMIC's 20,000 acre-feet entitlement as described in Paragraph  
21 12.8.1 hereof, the difference between the amount of that City's share of the  
22 20,000 acre-feet and the amount of stored and developed water allocated by SRP  
23 to that City's domestic water account shall be deducted from that City's assess-  
24 ment water allocated by SRP to the SRP assessed and townsite lands included in  
25 the City's domestic water account. In the event SRPMIC receives assessment  
26 water from a City as provided in the preceding sentence, SRPMIC shall reimburse

1 the City for the charge for the assessment water deducted from the City's  
2 domestic water account in an amount equal to the assessment paid for such water  
3 to SRP by the City at the time SRPMIC uses the assessment water.

4  
5 12.8.3 The amounts deducted and transferred from each City's domestic water  
6 account to the SRPMIC City Exchange Water Account shall not exceed the total  
7 amount of stored, developed, and assessment water allotted to each City's domes-  
8 tic water account by SRP for that calendar year. In the event there is insuf-  
9 ficient assessment and stored and developed water in any City's domestic water  
10 account maintained by SRP to deliver that City's share of SRPMIC's 20,000 acre-  
11 feet, as described in Paragraph 12.8.1 hereof, neither SRP, the particular City  
12 nor any other City shall be obligated to deliver the amount of such insuffi-  
13 ciency to SRPMIC. Any such deficiency in any City's domestic water account  
14 shall not be carried forward to subsequent years.

15  
16 12.8.4 SRPMIC's rights under this Paragraph 12.0 are not dependent upon the  
17 actual receipt of water by the Cities pursuant to Paragraphs 12.2, 12.3 or 12.4  
18 hereof. The Cities' rights under this Paragraph 12.0 are not dependent upon the  
19 actual receipt of water by SRPMIC pursuant to Paragraphs 12.7, 12.8.1, 12.8.2,  
20 12.8.3, 12.9, or 12.10. To the extent that the provisions of Paragraph 12.7  
21 through 12.11 hereof are contrary to the provisions of the SRP-City of Phoenix  
22 Domestic Water Delivery Agreement, Paragraphs 12.7 through 12.11 hereof shall  
23 control.

24  
25 12.8.5 It is the purpose of Paragraphs 12.7 through 12.12 hereof to describe  
26 the circumstances and arrangements under which SRP will deliver to SRPMIC stored

1 and developed water or, if sufficient stored and developed water is not  
2 available, assessment water, allocated annually by SRP to its shareholders'  
3 assessed lands and to townsite lands included in the Cities' individual domestic  
4 water accounts as described in Paragraph 12.8.1 herein. All parties to this  
5 Agreement recognize that the terminology used to describe these circumstances  
6 and arrangements reflect SRP's current operating methodology and that SRP or its  
7 successors may alter the terminology, circumstances and arrangements through  
8 which it delivers surface water to its shareholders' lands and to townsite lands  
9 within the Cities' boundaries which are included within the Cities' individual  
10 domestic water accounts. Notwithstanding any such alterations, SRPMIC shall  
11 continue to be entitled to receive water from SRP or its successors pursuant to  
12 this Paragraph 12.0 as long as SRP or its successors continue to deliver surface  
13 water from the Salt River and Verde River to SRP shareholder's lands or townsite  
14 lands included in the Cities' individual domestic water accounts.

15  
16 12.9 SRP will deliver water to SRPMIC from the SRPMIC City Exchange Water  
17 Account upon request to the extent SRPMIC has sufficient water credits for the  
18 calendar year remaining in the Account to make the delivery. If the credits in  
19 the SRPMIC City Exchange Water Account exceed 3,000 acre-feet on October 30, SRP  
20 will reallocate such excess to the Cities' domestic water accounts in the same  
21 proportion as the deductions for those accounts as provided in Paragraph 12.8  
22 hereof. If the SRPMIC City Exchange Water Account exceeds 1,000 acre-feet on  
23 November 30, SRP will reallocate such excess to the Cities' domestic water ac-  
24 counts in the same proportions. Upon the instruction of SRPMIC, SRP shall re-  
25 allocate additional amounts from the SRPMIC City Exchange Water Account on or  
26 after October 30 of the year. The Cities shall pay to SRP the normal delivery

1 price of any water used by them which was made available to the Cities under  
2 this Paragraph 12.9. The credits in the SRPMIC City Exchange Water Account  
3 shall automatically be reduced to zero at 11:59 p.m. of December 31 of each  
4 year.

5  
6 12.10 The amount of water available for delivery to SRPMIC under this Para-  
7 graph 12.0 will be phased in from the year 1987 to the year in which 20,000  
8 acre-feet of water is first available under the following formula: The annual  
9 number of acre-feet of water which shall be available for delivery to SRPMIC by  
10 SRP under this Paragraph 12.0 during the phase-in period will be the lesser of  
11 (a) the number of agricultural acres within SRP permanently taken out of agri-  
12 cultural production use to date during the phase-in period multiplied by one  
13 acre-foot or (b) 2,000 multiplied by the number of years since 1986. From and  
14 after the year in which 20,000 acre-feet of water is first available, and sub-  
15 ject to the provisions of Paragraphs 12.7, 12.8, 12.9, and 12.11 hereof, there  
16 shall be available for delivery to SRPMIC from SRP in every year 20,000 acre-  
17 feet of stored, developed and assessment water. The annual delivery of water to  
18 SRPMIC under this Paragraph 12.0 shall not exceed 20,000 acre-feet. The first  
19 delivery of such water will be made, on the order of SRPMIC, in the calendar  
20 year in which the enforceability date occurs, and shall be made available under  
21 the provisions of this Paragraph 12.10, in each year thereafter on the order of  
22 SRPMIC.

23  
24 12.11 SRPMIC agrees to use no more Bartlett Dam Agreement water north of the  
25 Arizona Canal than the amount of water available for delivery to SRPMIC under  
26 this Paragraph 12.0. The Cities shall continue to pay assessments and fees to

1 SRP for SRRD lands included within the domestic water agreements with SRP, but  
2 the Cities shall bear no cost for the delivery of SRP water to the SRPMIC pur-  
3 suant to this Paragraph 12.0. SRPMIC will pay to SRP the water delivery charges  
4 for this exchange water as provided in Paragraphs 15.1.(b), 15.1.(c), 15.1.(d)  
5 and 15.5 hereof.

6  
7 12.12 SRP will bear no costs associated with the Cities' River Water Ex-  
8 change and neither SRP nor its members shall be subject to the provisions of the  
9 Reclamation Reform Act as a result of this exchange.

10  
11 12.13 The Cities shall pay all operation, maintenance and replacement  
12 ("OM&R") charges associated with water delivered to the Cities pursuant to Para-  
13 graphs 12.2, 12.3 and 12.4 hereof. Such charges shall be paid by the Cities to  
14 the United States or, at the Secretary's direction, to CAWCD, under the same  
15 terms and conditions and at the same acre-foot rate as is provided for CAP M&I  
16 water under the Cities' CAP M&I water service subcontracts. Except as provided  
17 in the agreement attached hereto as Exhibit "12.3," the Cities shall not be  
18 obligated to pay any CAP water service capital charges with respect to the deli-  
19 very of water to the Cities pursuant to paragraphs 12.2, 12.3 or 12.4 hereof.

20  
21 12.14 The Cities each agree that, within one year after the date of enact-  
22 ment of an Act authorizing and approving this Agreement, as generally described  
23 in Paragraph 21.6 hereof, they shall deposit \$9 million into an escrow account,  
24 as described in Exhibit "12.14," in the following percentages:

25 . . .

26 . . .



1	City of Chandler	-	19.45%
2	City of Glendale	-	13.64%
3	City of Scottsdale	-	0.45%
4	City of Tempe	-	0.45%
5	City of Mesa	-	12.55%
6	City of Phoenix	-	22.73%
7	Town of Gilbert	-	<u>30.73%</u>
8			100.00%

9 The escrow account, excluding interest earned thereon, shall be used by the  
10 United States for the purposes of acquiring the rights described in Paragraph  
11 12.1 hereof. The escrow account shall be administered in accordance with the  
12 agreement attached hereto as Exhibit "12.14." Funds in the escrow account shall  
13 only be provided to the United States for the purpose of paying (1) the land  
14 purchase price and such necessary and reasonable costs as are customarily in-  
15 curred by purchasers in acquiring real estate in Arizona and (2) administrative  
16 costs associated with acquisition of the Colorado River water rights. Costs  
17 other than land purchase price shall not exceed \$200,000. Administrative costs  
18 shall include costs incurred by the United States, with its own forces or by  
19 contract forces, for the following types of activities: (1) preparation and  
20 negotiation of an amendatory contract with an irrigation district for the  
21 acquisition of the Colorado River water rights; (2) identifying willing sellers  
22 of land; (3) meetings with willing sellers of land and the irrigation district;  
23 (4) preparation and negotiation of land purchase option contracts; (5)  
24 preparation, negotiation, and administration of contracts with third parties to  
25 perform land acquisition activities on behalf of the United States; and (6)  
26 preparation of legal descriptions, land plats, title reports, and appraisal

1 reports. Administrative costs incurred by the United States for these  
2 activities shall include costs for salaries, travel, per diem, leave of  
3 employees, and legal and overhead costs. Such administrative costs shall be  
4 limited to the minimum amount necessary to acquire the land and water rights, as  
5 determined by the United States. Each City's obligation to fund the acquisition  
6 of the water rights described in Paragraph 12.1 shall be considered to have been  
7 met upon its deposit into the escrow account of its share of the \$9,000,000 as  
8 provided in this Paragraph 12.14.

9  
10 13.0 GROUNDWATER

11 Subject to this Paragraph 13.0 and to Paragraph 17.0 hereof, SRPMIC asserts  
12 its right to unimpeded use of

13 (a) the groundwater underlying the SRPMIC Reservation and

14 (b) the deep percolation recharge from water use on the SRPMIC Reserva-  
15 tion. However, at such time as non-Indian groundwater users in the East Salt  
16 River sub-basin of the Phoenix Active Management Area limit their groundwater  
17 pumping to a safe yield quantity, the SRPMIC will limit long-term average  
18 pumping on the SRPMIC Reservation to 32,640 acre-feet per year, the safe yield  
19 quantity, as provided in Paragraph 4.0 hereof, unless additional groundwater  
20 pumping is required by virtue of the elimination of water which would otherwise  
21 be provided under Paragraph 11.0 hereof, in which event long-term average  
22 groundwater pumping on the SRPMIC Reservation will be limited to 33,250 acre-  
23 feet per year. With the exception of Spill Water described in Paragraph 14.0  
24 hereof, total water use on the SRPMIC Reservation shall be limited to 122,400  
25 acre-feet per year as provided in Paragraphs 5.0 and 6.0 hereof.

26 . . .

1    14.0 SPILL WATER

2           The parties to this Agreement recognize that SRP and SRPMIC, as well as  
3 other water users, have asserted appropriative claims to the flood flow waters  
4 from the Salt and Verde Rivers in excess of the existing storage capacities of  
5 SRP reservoirs on those Rivers ("Spill Water"). The SRP and SRPMIC Spill Water  
6 claims are based upon the alleged actual diversion and beneficial use of this  
7 Spill Water through Granite Reef Dam and they extend to the capacity of the SRP  
8 and SRPMIC transmission and distribution systems at the time of these diver-  
9 sions. Although the United States has filed a claim on behalf of SRPMIC for  
10 Spill Water, SRP shall prosecute its claim and that of SRPMIC to this Spill  
11 Water in the Gila River Adjudication. Neither the SRPMIC nor the United States  
12 shall prosecute a separate claim for this Spill Water in the Gila River Adjudi-  
13 cation or in any other administrative or judicial proceeding. The United States  
14 shall not challenge any claims to Spill Water in the Gila River Adjudication or  
15 in any other administrative or other judicial proceeding. SRP shall use its  
16 best efforts to establish the validity of these claims in the Gila River Adjudi-  
17 cation and the SRPMIC and the United States agree to provide reasonable  
18 assistance to SRP upon request. All parties to this Agreement other than SRPMIC  
19 and the United States reserve the right to assert claims to Spill Water, protest  
20 the Spill Water claims of SRP and SRPMIC or protest the validity of any appro-  
21 priation of Spill Water, and/or seek appropriative rights wherein such Spill  
22 Water would be stored in Additional Active Conservation Capacity. Any infor-  
23 mation given by the United States to SRP related to SRPMIC's Spill Water claim  
24 will be available to all other parties to this Agreement upon request.

25    . . .

26    . . .

1    15.0 OPERATION AND MAINTENANCE OF SRPMIC DELIVERY SYSTEM

2

3    15.1 SRP will operate and maintain SRPMIC's existing water delivery system,  
4    including groundwater wells and pumps, located south of the Arizona Canal and  
5    within the exterior boundaries of the SRRD after that delivery system has been  
6    rehabilitated to such a degree that its condition is equivalent to SRP's de-  
7    livery system. So long as SRP operates this segment of SRPMIC's water delivery  
8    system, it shall deliver water to the high point of each quarter section of  
9    SRPMIC Reservation lands within the SRRD for the following water delivery  
10   charges:

11            (a) Groundwater -- water delivery costs will reflect the actual cost  
12            of OM&R and power associated with wells on the reservation within the SRRD  
13            (approximately \$35/acre-foot in 1987);

14            (b) Stored Water, Additional Stored Water, and Cities' Exchange  
15            Stored and Developed Water used by SRPMIC for agricultural irrigation  
16            uses -- the normal cost per acre-foot of stored water charged for irriga-  
17            tion use as determined on an annual basis by the Salt River Valley Water  
18            Users' Association's Board of Governors (approximately \$9.00/acre-foot in  
19            1988), for water users other than non-profit corporations within the SRRD  
20            which may receive free water from SRP for irrigation uses under limited  
21            circumstances;

22            (c) Stored Water, Additional Stored Water, and Cities' Exchange  
23            Stored and Developed Water for all uses by SRPMIC other than agricultural  
24            irrigation uses -- the normal cost per acre-foot of stored water charged  
25            for uses other than irrigation use as determined on an annual basis by the  
26            Salt River Valley Water Users' Board of Governors.

1 (d) Kent Decree, Bartlett Dam, Cities' Exchange assessment water,  
2 RWCD, and RID Exchange Water -- fifty percent (50%) of the normal cost per  
3 acre-foot of stored water as determined by the Salt River Valley Water  
4 Users' Association's Board of Governors (approximately \$4.50/acre-foot in  
5 1987).

6 (e) Spill Water -- the cost per acre-foot charged by SRP to SRP  
7 shareholders for the delivery of Spill Water.  
8

9 15.2 Upon further agreement of SRP and SRPMIC, SRP will also operate and main-  
10 tain (1) SRPMIC's water delivery system, including groundwater wells and pumps,  
11 located north of the Arizona Canal after that delivery system has been completed  
12 or has been rehabilitated to such a degree that its condition is equivalent to  
13 SRP's delivery system, and (2) SRPMIC's CAP water delivery system located north  
14 and/or south of the Arizona Canal after that delivery system has been  
15 completed. So long as SRP operates these systems, it shall deliver water to the  
16 high point of each quarter section of SRPMIC lands at SRP's actual cost for  
17 operating and maintaining the system.  
18

19 15.3 A separate agreement will be negotiated between SRP and SRPMIC with the  
20 approval of the Secretary, if necessary, for operation and maintenance of the  
21 facilities referred to in this Paragraph 15.0. SRP will use its best efforts to  
22 hire and train members of SRPMIC to operate and maintain the system. The opera-  
23 tion and maintenance agreement will incorporate provisions to this effect.  
24

25 15.4 Prior to substantial completion of the SRPMIC CAP water distribution sys-  
26 tem, the Secretary and SRPMIC will execute a separate agreement concerning

1 transfer of the responsibility to operate, maintain and repair the reservation  
2 CAP water distribution system.

3  
4 15.5 Either SRP or SRPMIC may terminate SRP's operation and maintenance of the  
5 SRPMIC water delivery system upon twenty-four (24) months' advance written no-  
6 tice to the other party. Upon such termination SRP will deliver SRPMIC's Kent  
7 Decree water, Bartlett Dam water, Cities' Exchange assessment water, RID Ex-  
8 change water, and RWCD water to the SRPMIC's turnouts in the Arizona Canal with-  
9 out charge to SRPMIC. SRP will be paid by SRPMIC for all other water delivered  
10 to SRPMIC at 50 percent of the normal cost per acre-foot of stored water as  
11 determined on an annual basis by the Salt River Valley Water Users'  
12 Association's Board of Governors.

13  
14 16.0 LIMITATIONS ON TRANSPORTATION AND USE OF SRP WATER

15  
16 16.1 SRPMIC will not transport either Kent Decree water, Stored water, Addi-  
17 tional Stored water, Cities' Exchange water, or groundwater pumped within the  
18 boundaries of the SRRD to lands or uses outside that portion of the SRPMIC Re-  
19 servation within the exterior boundaries of SRRD. Bartlett Dam water will not  
20 be transported outside the SRRD except as provided in Paragraph 12.11 hereof.

21  
22 16.2 Except as provided in Paragraph 19.0 hereof, the water made available to  
23 SRPMIC from the various sources under this Agreement is solely for use on the  
24 SRPMIC Reservation. There are no restrictions on the purposes for which water  
25 may be used within the SRPMIC Reservation.

26 . . .

1 17.0 SRPMIC WAIVER OF CLAIMS

2  
3 17.1 Except as provided in Paragraph 17.2 hereof, SRPMIC, on behalf of itself  
4 and its members, shall execute a waiver and release of:

5 (a) Any and all past, present and future claims of water rights or in-  
6 juries to water rights (including water rights in groundwater, surface water,  
7 and effluent) for lands within the SRPMIC Reservation, from time immemorial to  
8 the date of execution of such waiver and release, which SRPMIC may have, or  
9 which it may have standing to assert on behalf of its members, against the  
10 United States, the State of Arizona and any agency or political subdivision  
11 thereof, or any other person, corporation or municipal corporation, under the  
12 laws of the United States or the State of Arizona;

13 (b) Any and all future claims of rights to water (including water rights  
14 in groundwater, surface water, and effluent) for lands within the SRPMIC Reser-  
15 vation, from and after the date of execution of such waiver and release, which  
16 SRPMIC may have, or which it may have standing to assert on behalf of its mem-  
17 bers, against the United States, the State of Arizona and any agency or  
18 political subdivision thereof, or any other person, corporation, or municipal  
19 corporation, under the laws of the United States or the State of Arizona; and

20 (c) All past, present and future claims of water rights or injuries to  
21 water rights (including water rights in groundwater, surface water and efflu-  
22 ent) for lands outside of the exterior boundaries of the SRPMIC Reservation  
23 based upon aboriginal occupancy by the Pima and Maricopa Indians, which SRPMIC  
24 may have, or which it may have standing to assert on behalf of its members,  
25 against the United States, the State of Arizona and any agency or political

26 . . .

1 subdivision thereof, or any other person, corporation, or municipal corporation,  
2 under the laws of the United States or the State of Arizona.

3 Nothing herein shall prevent SRPMIC from participating with other entities  
4 in further activities to augment the water supply available to the Salt River  
5 Valley. The waiver and release will be in the form set out in Exhibit "3.0" to  
6 this Agreement.

7  
8 17.2 Notwithstanding the execution by SRPMIC of the waiver and release de-  
9 scribed in Paragraph 17.1 hereof, SRPMIC, its members, and the United States on  
10 their behalf, shall retain the right to assert the following claims:

11 (a) Any claim for damages to water quality; provided, however, that Para-  
12 graph 17.1 hereof shall be construed to bar SRPMIC and its members from assert-  
13 ing any claim for damages to water quality caused by (1) the withdrawal of  
14 groundwater in accordance with the Arizona Groundwater Management Act; (2) the  
15 parties' performance of their obligations under this Agreement; (3) changes to  
16 water quality caused by the delivery or commingling of water delivered from the  
17 CAP with any of the water described in Paragraph 6.0 of this Agreement; or (4)  
18 any combination thereof.

19 (b) Claims against the United States as provided in Section 10 of the Salt  
20 River Pima-Maricopa Water Rights Settlement Act of 1988 (the "Act").

21 (c) Claims of water rights or injuries to water rights, other than those  
22 based upon aboriginal occupancy by the Pima and Maricopa Indians, for lands  
23 outside of the exterior boundaries of the SRPMIC Reservation acquired by SRPMIC  
24 or the United States on behalf of SRPMIC subsequent to January 1, 1985.

25 . . .

26 . . .



1 (d) Claims for the enforcement of SRPMIC's water rights as provided for in  
2 this Agreement under the continuing jurisdiction of the Court in the Gila River  
3 Adjudication.

4 (e) Claims against any person for the breach or enforcement of the terms  
5 of this Agreement or rights recognized herein.

6  
7 17.3 Any entitlement to water of any individual member of the SRPMIC or its  
8 allottees for lands within the SRPMIC Reservation shall be satisfied out of the  
9 water resources provided in this Agreement.

10  
11 17.4 Except as provided in Section 10(d) of the Act, the United States shall not  
12 assert any claim against any person in its own right or on behalf of SRPMIC  
13 based upon (1) water rights or injuries to water rights of SRPMIC, its members  
14 or allottees; or (2) water rights or injuries to water rights held by the United  
15 States on behalf of SRPMIC, its members or allottees.

16  
17 17.5 The parties shall file a stipulation and form of judgment in the Gila River  
18 Adjudication in the form of Exhibit "3.e" hereto. The United States shall be  
19 permitted to support any claim of any party to this Agreement filed in the Gila  
20 River Adjudication from which SRPMIC's water rights under this Agreement are  
21 derived.

22  
23 17.6 Except for actions in the United States Claims Court, the United States and  
24 SRPMIC shall dismiss with prejudice all water and power-related litigation  
25 pending in Federal or State courts in which SRPMIC is a plaintiff or which has  
26 . . .

1 been brought by the United States on behalf of SRPMIC. The dismissals shall be  
2 in the form set out in Exhibits "3.a," "3.b," "3.c," and "3.f."

3  
4 17.7 The United States and SRPMIC waive their sovereign immunity from suit in  
5 Federal District Court in regard to any claim which relates to the interpre-  
6 tation or enforcement of this Agreement.

7  
8 18.0 RECHARGE ARRANGEMENTS

9 SRP, the Cities, and the SRPMIC will cooperate in studying the location of  
10 potential sites for water related underground storage and recovery facilities or  
11 recharge facilities on SRP, City, State of Arizona, Federal and SRPMIC lands.  
12 The SRPMIC will provide reasonable access to the SRPMIC Reservation for the  
13 purpose of conducting such a study to the extent that such a study does not  
14 unreasonably interfere with SRPMIC land use and does not unreasonably damage  
15 SRPMIC land. If the study determines that a potential site on the SRPMIC's  
16 Reservation is appropriate for recharge use, and such use will not unreasonably  
17 interfere with SRPMIC land use and the facilities are operated as comprehensive  
18 projects among the parties, the parties identified in this Paragraph 18.0 will  
19 negotiate in good faith for the use of necessary land for the location, con-  
20 struction and operation of such a facility.

21  
22 19.0 CAP WATER LEASE

23  
24 19.1 The Secretary and SRPMIC shall amend their contract dated December 11,  
25 1980, for the delivery of 13,300 acre-feet of CAP water, to permit the leasing  
26 by SRPMIC of all of that CAP entitlement to the Cities for a term of 99 years

1 from the year 2000; provided that the Secretary shall be a party to any con-  
2 tract or lease. The maximum annual amount of water to be used by SRPMIC as  
3 provided in Paragraphs 5.0, 6.0 and 13.0 hereof shall be reduced by the amount  
4 of CAP water leased for use outside the SRPMIC Reservation. SRPMIC shall lease  
5 all right, title and interest it has under the terms of the CAP Indian Water  
6 Delivery Contract between the United States and SRPMIC dated December 11, 1980  
7 ("the Contract"), to 13,300 acre-feet of CAP water to the Cities for a term not  
8 to exceed 99 years from the year 2000. The Secretary and SRPMIC will amend the  
9 Contract to extend the Contract term to the year 2099. SRPMIC shall lease to  
10 the Cities, in accordance with the percentage reflected in Paragraph 19.6 here-  
11 of, all of its CAP allocation for the total sum of \$16 million. Each City, on  
12 the enforceability date of this Agreement, shall elect to pay its lease amount  
13 by (i) payment of its entire lease amount on the enforceability date of this  
14 Agreement, (ii) payment of one-half its lease amount on the enforceability date  
15 of this Agreement and the balance in four (4) equal annual payments beginning on  
16 the first anniversary of the enforceability date of this Agreement, with in-  
17 terest on the unpaid balance at the annual rate of one percent (1%) over the net  
18 interest rate paid by the City of Phoenix on its Water Revenue Refunding Bonds,  
19 Series 1986, as determined on the effective date of this Agreement, or (iii)  
20 payment in eight (8) equal annual installments beginning on the enforceability  
21 date of this Agreement, with interest on the unpaid balance at the annual rate  
22 of one percent (1%) over the Valley National Bank Home Office prime rate as  
23 determined on the enforceability date of this Agreement. The principal amount  
24 may be prepaid at any time without penalty.

25 The lease shall bind the Cities to those provisions of each City's CAP M&I  
26 water service subcontract which are enumerated in the lease. The lease of CAP

1 water from SRPMIC to the Cities shall not obligate either the Cities or SRPMIC  
2 to pay CAP capital repayment charges. The Cities shall pay full operation,  
3 maintenance and replacement costs to the United States, or, at the Secretary's  
4 discretion, directly to CAWCD. The lease shall be evidenced by water lease  
5 agreements between SRPMIC, the Secretary and the individual Cities in the form  
6 attached as Exhibits "3.m.1" through "3.m.7" hereto.

7  
8 19.2 SRPMIC shall direct the Secretary to deliver its CAP water to the lessees  
9 in accordance with each City's entitlement to such water under the Project Water  
10 Lease Agreements attached as Exhibits "3.m.1" through "3.m.7" hereto; provided,  
11 however, that neither the Secretary nor CAWCD shall be obligated to make such  
12 deliveries if, in the judgment of CAWCD or the Secretary, delivery or schedule  
13 of deliveries to the lessees would limit deliveries of CAP water to other CAP  
14 subcontractors to a degree greater than would deliveries to SRPMIC.

15  
16 19.3 For the purpose of determining the allocation and repayment of costs of the  
17 CAP as provided in Article 9.3 of the CAP Master Repayment Contract, the costs  
18 associated with the delivery of CAP water leased by SRPMIC shall be non-  
19 reimbursable, and such costs shall be excluded from CAWCD's repayment obliga-  
20 tion.

21  
22 19.4 Except for CAP water, no other water provided to SRPMIC pursuant to this  
23 Agreement shall be marketable by SRPMIC.

24  
25 19.5 In the settlement of all of the issues resolved in this Agreement, the  
26 Cities and SRPMIC have assumed that the Indian CAP project water allocation is a

1 federal resource which would not be subject to taxation. Although it is the  
2 understanding and intent of the Cities and SRPMIC that Indian CAP project water  
3 allocations are not subject to taxation in the first instance, to the extent  
4 that any such taxation right or power may exist, the Cities and SRPMIC each  
5 agree to refrain from imposing any tax on the lease, the project water or any  
6 tax measured by the value of the project water to be delivered under this Agree-  
7 ment or the transportation of project water under this Agreement and each  
8 expressly waives any right it may have to levy any such tax.

9  
10 19.6 The Cities shall be entitled to lease the SRPMIC CAP allocation in the  
11 amounts as set forth below. Any City electing not to take its entitlement pro-  
12 vided for herein shall offer its entitlement to all of the remaining Cities pro  
13 rata, except that the City may voluntarily offer its entitlement to any one or  
14 more of the remaining Cities if such City or Cities agree to accept assignment  
15 of the offering City's rights and obligations with respect to that City's  
16 Colorado River water as provided in Paragraph 12.0 hereof:

	<u>Percentage Shares</u>	<u>Water Amount</u>
(a) City of Chandler	19.45%	2,586 acre-feet per year
(b) City of Glendale	13.64%	1,814 acre-feet per year
(c) City of Scottsdale	0.45%	60 acre-feet per year
(d) City of Tempe	0.45%	60 acre-feet per year
(e) City of Mesa	12.55%	1,669 acre-feet per year
(f) City of Phoenix	22.73%	3,023 acre-feet per year
(g) Town of Gilbert	30.73%	4,088 acre-feet per year
TOTAL	100.00%	13,300 acre-feet per year

26 . . .

1    20.0 COST SHARING RESPONSIBILITIES

2  
3    20.1 Since the duty of water agreed to by SRPMIC is realistic only if the water  
4    transmission and delivery system employed is highly efficient, the Secretary  
5    will request the Congress to appropriate approximately \$58.22 million for  
6    facilities to augment and to renovate the SRPMIC's existing water delivery sys-  
7    tem, to subjugate additional lands and for other purposes. The parties will  
8    support the requested appropriation and any supplemental appropriation neces-  
9    sary. Of the \$58.22 million, \$17 million will be deposited into the Community  
10   Trust Fund for rehabilitation and improvement of SRPMIC's existing water deliv-  
11   ery system and lands, \$10 million will be for the design and construction of  
12   new facilities for the delivery of water from the SRPMIC turnout on the CAP  
13   Granite Reef Aqueduct to lands lying north and south of the Arizona Canal and  
14   west of the Parker Dam Power Project power transmission line easement (which  
15   shall include sums as may already have been appropriated and expended for such  
16   purposes), \$30.47 million will be deposited into the Community Trust Fund for  
17   SRPMIC to use in the design and construction of facilities for the development  
18   of additional lands to put to beneficial use the Community's water entitlement,  
19   for other economic and community development on the SRPMIC Reservation and to  
20   defray the cost to SRPMIC of CAP OM&R charges, and \$.75 million will be for  
21   Additional Active Conservation Capacity. This Agreement includes local water  
22   provided to SRPMIC by SRP, RWCD, RID and the Cities, which has been estimated by  
23   the local parties to have a value of \$96 million. In addition to the local  
24   water contribution provided for herein, there shall be a local cash contribution  
25   to the United States of \$9 million for purchase of the Colorado River Water and  
26   . . .

of \$21 million to be paid into the trust fund described in Paragraph 20.2(b) hereof.

20.2 The parties have agreed that the direct costs including contributions in-kind described in Paragraph 20.2(a), subject to authority and appropriations where necessary, will be funded or contributed as follows:

(a) Direct Contributions To Costs

Local Contributions

1. In-kind

LOCAL WATER	\$ 96 Million
(Estimated In-Kind Value)	

2. Money

COLORADO RIVER WATER	
PURCHASE	9 Million

CAP WATER LEASE	16 Million
-----------------	------------

STATE OF ARIZONA	3 Million
------------------	-----------

SRPMIC	<u>2 Million</u>
--------	------------------

SUBTOTAL	\$126 Million	(68.4%)
----------	---------------	---------

U.S. Contribution

FACILITIES-WATER SUPPLY	10 Million
-------------------------	------------

FACILITIES-REHAB	17 Million
------------------	------------

TRUST FUND	26 Million
------------	------------

CAP OM&R WATER COST	4.47 Million
---------------------	--------------

STORAGE	<u>.75 Million</u>
---------	--------------------

SUBTOTAL	\$58.22 Million	(31.6%)
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. . .

1 (b) Trust Fund Composition

2 Cash contributions will be made to a trust fund to be used for water  
3 development projects and other economic and community development projects.  
4 The trust fund will be composed of the following contributions:

5 UNITED STATES	\$47.47 Million
6 CAP WATER LEASE	16 Million
7 STATE	3 Million
8 SRPMIC	<u>2 Million</u>
9 TOTAL	\$68.47 Million

10  
11  
12 20.3 The United States shall make no claims for reimbursement of costs arising  
13 out of the implementation of the Act or this Agreement against any Indian-owned  
14 land within the SRPMIC's Reservation, and no assessment shall be made in regard  
15 to such costs against such lands.

16  
17 21.0 OTHER PROVISIONS

18  
19 21.1 Disclaimer - Nothing in this Agreement shall be construed as establishing  
20 any standard to be used for the quantification of Federal reserved rights, ab-  
21 original claims, or any other Indian claims to water in any judicial or admini-  
22 strative proceeding.

23  
24 21.2 Evidentiary Effect of Negotiations - This Agreement has been arrived at in  
25 the process of good faith negotiation for the purpose of resolving legal dis-  
26 putes, including pending litigation, and all parties agree that no offers and/or



1 compromises made in the course thereof shall be construed as admissions against  
2 interest or be used in any legal proceeding other than one for approval, con-  
3 firmation, interpretation, or enforcement of this Agreement.

4  
5 21.3 Effect of Execution by State of Arizona - Execution of this Agreement by  
6 the State of Arizona constitutes the confirmation that it is the policy of the  
7 State of Arizona to assist in carrying out the provisions hereof to the extent  
8 it may do so in accordance with its responsibility and authority under the  
9 law. It is not intended that this Agreement shall be determinative of the  
10 action to be taken by any state agency in any adjudicatory or rule making pro-  
11 ceeding. Nothing herein shall be construed as a waiver of any rights which the  
12 State of Arizona has as to its trust lands under the Enabling Act.

13  
14 21.4 Water delivery during Plan 6 construction - The parties to this Agreement  
15 recognize that there may be interim water supply shortages during Plan 6 con-  
16 struction, other provisions of this Agreement notwithstanding. The SRPMIC  
17 agrees to accept during that construction period shortages in water supply that  
18 are of the same magnitude as shortages accepted by other Salt River water users  
19 for the affected classes of water. Details of water supply and shortage during  
20 construction will be agreed to in advance of Roosevelt Dam modification.

21  
22 21.5 SRPMIC/SRP Electricity Rate Litigation

23  
24 21.5.1 After the enforceability date of this Agreement, all electricity  
25 used by SRPMIC for agricultural groundwater pumps on the SRPMIC Reservation  
26 shall be billed by SRP at SRP's Standard E47 Agricultural Pumping Rate or any

1 future rate which is the standard rate applied to SRP agricultural pumping cus-  
2 tomers. After the enforceability date of this Agreement, SRP shall transfer  
3 ownership to SRPMIC, free of charge, those electrical distribution facilities  
4 associated with these pumps which must be owned, maintained and replaced by SRP  
5 customers being billed for agricultural pumping at the Standard E47 Agricultural  
6 Pumping Rate. These facilities include, but are not limited to, the trans-  
7 formers adjacent to the pumps, the transformer platforms and poles, wiring from  
8 the transformers to the pumps, and the meter boxes. The jumper wires shall be  
9 transferred to SRPMIC on single pole installations and retained by SRP on two  
10 pole structures. SRP shall retain ownership of the disconnects, phase wires,  
11 neutral wires, meters and metering transformers. Thereafter, SRPMIC shall main-  
12 tain and replace at its cost all facilities transferred to it by SRP under this  
13 Paragraph 21.5.1.

14  
15 21.5.2 SRPMIC shall be entitled to participate in SRP's Experimental Time  
16 of Week Rider for agricultural pumping by SRPMIC on the SRPMIC Reservation for  
17 as long as this experimental program remains in effect; provided, however, that  
18 SRPMIC must satisfy all conditions imposed by SRP on participants in the Experi-  
19 mental Rider. The primary condition to participating in this program is the  
20 customer's agreement to turn-off each pump for the same designated 10 hour  
21 period each week from May 15 through October 14 of each year. In the event this  
22 Experimental Rider is canceled by SRP, SRPMIC shall be entitled to participate  
23 in any replacement experimental or permanent rate program applicable to agricul-  
24 tural pumping by SRP customers; provided, however, that SRPMIC must satisfy all  
25 conditions imposed by SRP on participants in all future programs.

26 . . .

1    21.6   Enforceability Date and Related Matters

2  
3        21.6.1 This Agreement shall be effective and binding when it has been exe-  
4    cuted by all parties hereto and when the parties to this Agreement have executed  
5    all Exhibits to the Agreement which call for their signatures. Other than to  
6    take all steps necessary to cause the events described in Paragraphs 21.6.1(a)  
7    and (b) hereof to occur, no party to the Agreement shall be required to perform  
8    any of the obligations, or be entitled to receive any of the benefits, under the  
9    Agreement or under any of the Exhibits until such time as all of the following  
10   events have occurred, which date is referred to herein as the "enforceability  
11   date":

12        (a) The authorization in Section 10(b)(1) of the Act has become effective;  
13   and

14        (b) The permits required to effect the RID exchange pursuant to Paragraph  
15   11.0 hereof have been granted by December 31, 1991. This condition may be  
16   eliminated if waived by notice to the parties to this Agreement by SRPMIC on or  
17   before December 30, 1991. Notice of the waiver will be given to the parties to  
18   this Agreement five days prior to its effective date.

19  
20        In the event each of the foregoing events shall not have occurred, by the  
21   date indicated, this Agreement shall be of no further force or effect.

22  
23        21.6.2 Exhibit "21.6" is the Act of Congress which authorizes the federal  
24   action required to carry out this Agreement. Any Act of Congress which materi-  
25   ally amends the Act set forth in Exhibit "21.6" hereto prior to the enforce-  
26   ability date of this Agreement without the written consent of the parties

1 adversely affected by the amendment shall relieve all parties to this Agreement  
2 of their obligations hereunder.

3  
4 21.6.3 In the event the authorizations contained in section 10(b)(1) of the  
5 Act have become effective and a party to the Gila River Adjudication has ob-  
6 tained the reversal of the judgment of the Maricopa County Superior Court ap-  
7 proving Exhibit "3.e" and no further appeal may be taken, the parties to this  
8 Agreement shall:

9 (a) Perform all of their respective obligations under this Agreement,  
10 unless otherwise ordered by a court of competent jurisdiction; and

11 (b) Permit SRPMIC and its members, and the United States on their  
12 behalf, to assert in the Gila River Adjudication claims for water rights in  
13 addition to the 122,400 acre-feet of water available as a maximum annual  
14 water entitlement to SRPMIC under this Agreement, and the other parties to  
15 this Agreement agree not to assert any defenses against SRPMIC and the  
16 United States, including, inter alia: (1) That SRPMIC and the United States  
17 are prohibited by the Kent Decree from asserting a larger federal reserved  
18 water right on behalf of SRPMIC; and (2) That the practicably irrigable  
19 acreage standard set forth in Arizona v. California does not apply to the  
20 SRPMIC Reservation; however, SRPMIC and the United States agree that a  
21 reserved right up to 122,400 acre-feet will be satisfied as provided in the  
22 Agreement, and that if a right in excess of 122,400 acre-feet is awarded,  
23 the excess of such right will not be exercised, in any phase of the Gila  
24 River Adjudication or any subsequent proceedings, against junior rights  
25 held by other parties to this Agreement and the water rights appurtenant to  
26 shareholder lands within the SRRD.

1  
2       21.6.4 In the event the authorizations contained in section 10(b)(1) of  
3 the Act have become effective and a party to the Gila River Adjudication has  
4 obtained the reversal of the judgment of the Maricopa County Superior Court  
5 approving Exhibit "3.e" hereto, and no further appeal may be taken, and a court  
6 of competent jurisdiction has permanently ordered any single party to this  
7 Agreement not to perform an obligation to deliver water to SRPMIC as provided in  
8 this Agreement,

9           (a) All other parties to this Agreement shall perform all of their  
10 respective obligations under this Agreement, unless otherwise ordered by a  
11 court of competent jurisdiction;

12           (b) The party ordered not to perform an obligation to deliver water  
13 to SRPMIC as provided in this Agreement shall perform all of its remaining  
14 obligations, if any, under this Agreement; that party shall be relieved of  
15 its obligations under this Agreement only to the extent necessary to comply  
16 with the Court's Order; and

17           (c) SRPMIC and its members, and the United States on their behalf,  
18 may assert in the Gila River Adjudication claims for water rights in addi-  
19 tion to the 122,400 acre-feet of water available as a maximum annual water  
20 entitlement to SRPMIC under this Agreement, and the other parties to this  
21 Agreement agree not to assert any defenses against SRPMIC and the United  
22 States, including, inter alia: (1) That SRPMIC and the United States are  
23 prohibited by the Kent Decree from asserting a larger federal reserved  
24 water right on behalf of SRPMIC; and (2) That the practicably irrigable  
25 acreage standard set forth in Arizona v. California does not apply to the  
26 SRPMIC Reservation; however, SRPMIC and the United States agree that a

1 reserved right up to 122,400 acre-feet will be satisfied as provided in the  
2 Agreement, to the extent not precluded by an order of a court of competent  
3 jurisdiction as provided in Paragraph 21.6.4(a) hereof, and that if a right  
4 in excess of 122,400 acre-feet is awarded, the excess of such right and the  
5 amount of any SRPMIC right under the Agreement which has been enjoined as  
6 provided in Paragraph 21.6.4(a) will not be exercised, in any phase of the  
7 Gila River Adjudication or in any subsequent proceedings, against junior  
8 rights held by other parties to this Agreement and the water rights appur-  
9 tenant to shareholder lands within the SRRD.

10  
11 21.6.5 In the event the authorizations contained in section 10(b)(1) of  
12 the Act have become effective and a party to the Gila River Adjudication has  
13 obtained the reversal of the judgment of the Maricopa County Superior Court  
14 approving Exhibit "3.e" hereto, and no further appeal may be taken, and a court  
15 of competent jurisdiction has permanently ordered more than one of the parties  
16 to this Agreement not to perform an obligation to deliver water to SRPMIC as  
17 provided in this Agreement, then, unless otherwise agreed by SRPMIC, this  
18 Agreement shall be null and void and, except as provided in this Paragraph  
19 21.6.5, all parties shall be relieved of their obligations under this  
20 Agreement. All funds appropriated pursuant to sections 9(a)(2) and 9(c) of the  
21 Act which have not been expended by SRPMIC shall revert to the Treasury of the  
22 United States and any funds appropriated pursuant to Paragraph 20.2(b) of this  
23 Agreement which have not been expended by SRPMIC shall revert to the State of  
24 Arizona. If SRPMIC has expended some of the funds appropriated by the United  
25 States and the State, the remaining funds shall be apportioned between the  
26 United States and the State in proportion to their respective contributions to

1 the Community Trust Fund pursuant to these sections of the Act and the Agree-  
2 ment.

3  
4 21.7 Uses - All parties to this Agreement recognize that water uses on the ur-  
5 banized portions of the lands within SRRD and RWCD have changed and will  
6 continue to change from agricultural uses to municipal and industrial uses.  
7 The parties agree that such changes in use are valid, and that water appurtenant  
8 to lands which are now or will become urbanized within a particular municipal  
9 or other water service area may be delivered for M&I uses on such urbanized  
10 lands and the water rights appurtenant to such urbanized lands shall carry the  
11 original priority dates. With the exception of type of use, these water rights  
12 are as described in the Kent Decree, the Lehane decision (W. C. Lehane v. Salt  
13 River Valley Water Users' Assoc., et al., Cause No. 32021-C) and Paragraphs 21.8  
14 and 10.1 hereof and the documents referred to therein. No party to this Agree-  
15 ment shall challenge or otherwise object to these rights on the basis of change  
16 of use, nature of delivery, or on any other bases in any judicial or admini-  
17 strative proceeding. As to urbanized lands within the SRRD, the parties agree  
18 that the historical practices of the Cities and SRP and the general nature of  
19 the rights are appropriately described in the Water Commissioner's Report of  
20 June 3, 1977, a copy of which is attached hereto as Exhibit "21.7." Nothing in  
21 this Paragraph 21.7 shall be construed as authorizing the delivery of water to  
22 any municipality by SRP for M&I uses within the SRRD in the absence of a written  
23 delivery agreement between any such municipality and SRP. The term "party" or  
24 "parties" as used in this Paragraph 21.7 means all parties to this Agreement

25 . . .

26 . . .

1 except for the United States acting as trustee for Indian tribes other than  
2 SRPMIC.

3  
4 21.8 Confirmation of Rights

5  
6 21.8(a) The parties to this Agreement, except for the United States  
7 acting as trustee for Indian tribes other than SRPMIC, ratify, confirm, declare  
8 to be valid and agree not to object to, dispute or challenge, in the Gila River  
9 Adjudication, or otherwise, the rights of the City of Phoenix to the waters of  
10 the Salt and Verde Rivers, which rights are described, stated, confirmed or  
11 established in the following documents:

12 (1) Contract No. 1830 between the United States of America, the City  
13 of Phoenix and the Salt River Valley Water Users' Association dated October 7,  
14 1948.

15 (2) Contract No. 1604 between the Salt River Valley Water Users Asso-  
16 ciation and The City of Phoenix dated November 22, 1946, to the extent that  
17 Contract No. 1604 is in accordance with and consistent with Contract No. 1830  
18 described in Paragraph 21.8(a)(1) hereof.

19 . . .

20 (3) Certificate of Water Right No. 1999 from the State of Arizona to  
21 the City of Phoenix.

22  
23 21.8(b) The parties to this Agreement, except for the United States act-  
24 ing as trustee for Indian tribes other than SRPMIC, ratify, confirm, declare to  
25 be valid, and agree not to object to, dispute, or challenge in the Gila River  
26 Adjudication, or otherwise, the rights of SRP and its shareholders to the waters



1 of the Salt and Verde Rivers, which rights are appurtenant to the lands of SRP  
2 and its shareholders, and are described, stated, confirmed or established in  
3 the following documents:

4 (1) Notices of Appropriation of Water posted and recorded by the  
5 Hudson Reservoir and Canal Company with the Maricopa County, Arizona, Re-  
6 corder's Office in Book of Canals No. 1 at page 283 on April 20, 1893, Book  
7 of Canals No. 1 at page 310 on August 22, 1893, and Book of Canals No. 2 at  
8 page 74 on August 31, 1901 and with the Gila County, Arizona Recorder's  
9 Office in Book No. 1 of Miscellaneous Records at pages 478 to 480 on April  
10 22, 1893.

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

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

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

23 (5) Decision and Decree, and all Decrees supplemental thereto, en-  
24 tered in Hurley v. Abbott, In the District Court of The Third Judicial  
25 District of The Territory of Arizona, In and For The County of Maricopa,  
26 No. 4564, March 1, 1910.

1           (6) Decision and Decree, and all supplemental Decrees thereto, en-  
2           tered in Benson v. Allison, in the Superior Court of Maricopa County, State  
3           of Arizona, No. 7589, November 14, 1917, solely as applied to the Northeast  
4           1/4 of Section 25, Township 1 North, Range 1 East, G&SRB&M.

5           (7) Salt River Valley Water Users' Association Articles of In corpo-  
6           ration, as amended, in existence on February 12, 1988.

7           (8) Water Right applications approved and accepted by authority of  
8           the Secretary of Interior for homestead lands under the Reclamation Act and  
9           for Lands in Private Ownership and Lands Other than Homesteads Under the  
10          Reclamation Act between The United States of America, Department of  
11          Interior, Bureau of Reclamation and individual shareholders of the Salt  
12          River Valley Water Users' Association.

13          (9) Agreement between the United States of America and Salt River  
14          Valley Water Users' Association, dated June 25, 1904.

15          (10) Contract between the United States of America and Salt River  
16          Valley Water Users' Association dated September 6, 1917, as amended on July  
17          26, 1922, April 25, 1928, June 30, 1930, November 29, 1930, September 10,  
18          1941, and June 30, 1950.

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

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

26          . . .

1           (13) Contract between Salt River Valley Water Users' Association and  
2           Salt River Project Agricultural Improvement and Power District, dated March  
3           22, 1937, as amended on February 28, 1944, and September 12, 1949.

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

7  
8   21.9 Order of Spill - The City of Phoenix and the SRPMIC storage entitlements  
9   under Paragraph 11.2 hereof shall be the first to spill from Stewart Mountain  
10   Dam on the Salt River and Bartlett Dam on the Verde River; the entitlements of  
11   the City of Phoenix and SRPMIC will spill in pro rata amounts. The SRPMIC tem-  
12   porary storage entitlement for Kent Decree water under Paragraph 7.4 hereof  
13   shall spill from Stewart Mountain Dam on the Salt River after the storage en-  
14   titlements provided in Paragraph 11.2 hereof. All other storage entitlements in  
15   SRP reservoirs on the Salt and Verde Rivers shall spill after the entitlements  
16   described in Paragraphs 11.2 and 7.4 hereof.

17  
18   21.10 Governing Law - This Agreement will be construed in accordance with the  
19   laws of the State of Arizona and applicable federal law. Nothing contained  
20   herein waives the right of the United States or the SRPMIC to object to the  
21   jurisdiction of the courts of the State of Arizona to adjudicate any disputes  
22   arising under this Agreement.

23  
24   21.11 Succession - This Agreement shall inure to the benefit of and be binding  
25   upon the successors of the parties hereto.

26   . . .

1 21.12 Effect on CAP Allocations and Nature of Water for Underground Storage and  
2 Recovery Purposes - The Secretary and the State of Arizona recognize and agree  
3 that the water to be made available to the Cities pursuant to Paragraphs 10.3  
4 (conversion rights and potential water marketed by FMIC), 11.0 (RID Exchange  
5 water), 12.2 (Cities' River Water Exchange), and 19.0 (SRPMIC lease) hereof  
6 constitute water resources received by such Cities in replacement of existing  
7 water resources and in good faith settlement of litigation of SRPMIC water  
8 claims. The receipt of or entitlement to water from these sources shall not be  
9 counted in any allocation or reallocation of the CAP supply. It is the under-  
10 standing of the parties hereto that Exhibits "3.h.1" through "3.h.7" hereto and  
11 Exhibits "3.m.1" through "3.m.7" hereto are not water service subcontracts  
12 issued under the Secretary's decision allocating CAP water which was published  
13 in the Federal Register on March 24, 1983, at 48 Fed. Reg. 12446 et seq.

14  
15 21.13 Destruction of Facilities - Several of the sources of water described in  
16 Paragraphs 6.1 and 6.2 hereof are dependent upon the existence of conservation  
17 and storage facilities, as well as transmission facilities, to deliver such  
18 water to SRPMIC. The destruction of any of these facilities by any cause shall  
19 not permanently extinguish SRPMIC's right to receive water otherwise made  
20 available by the affected facility; however, such destruction may relieve the  
21 parties of the obligation to deliver such water to SRPMIC until the affected  
22 facility is repaired or replaced or other suitable facilities have been agreed  
23 to by the principal parties in interest as hereinafter provided. Any party  
24 responsible for repairing or replacing an affected facility under other con-  
25 tractual arrangements shall have that same obligation under this Agreement. In  
26 the event no party has such an obligation, all of the parties, including the

1 United States, shall use all reasonable efforts to provide a permanent equitable  
2 substitute source for the affected water supply in a manner consistent with the  
3 parties' respective obligations under this Agreement. This Paragraph 21.13  
4 shall not apply to CAWCD.

5  
6 21.14 Participation of CAWCD. The parties acknowledge that CAWCD's partici-  
7 pation in this Agreement is based upon the Statement of Policies and Principles  
8 adopted by its Board of Directors on March 3, 1988, a copy of which is attached  
9 hereto as Exhibit "21.14."

10  
11 21.15 Contingent on Appropriation of Funds. The expenditure or advance of any  
12 money or the performance of any obligation by the United States under this  
13 Agreement shall be contingent upon appropriation of funds therefor. No  
14 liability shall accrue to the United States in case funds are not appropriated.

15  
16 21.16 Officials Not to Benefit. No member of or delegate to Congress or Resi-  
17 dent Commissioner shall be admitted to any share or part of this Agreement or to  
18 any benefit that may arise herefrom. This restriction shall not be construed to  
19 extend to this Agreement if made with a corporation or company for its general  
20 benefit.

21  
22 21.17 Miscellaneous Provisions

23 21.17.a Counterparts - This Agreement may be executed in duplicate origi-  
24 nals, each of which shall constitute an original Agreement.

25 21.17.b Notices - Any notice to be given hereunder shall have been prop-  
26 erly given when received by the officer or manager designated herein, or when

1 deposited in the United States mail in an Arizona or Washington, D.C., post  
2 office, certified or registered, postage prepaid, addressed as follows:

3 As to the United States of America: Secretary of the Interior  
4 Department of the Interior  
Washington, D.C.

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

8 Regional Director  
9 Bureau of Reclamation  
10 Lower Colorado Region  
P.O. Box 427  
Boulder City, Nevada 89005

11 As to the State of Arizona: Office of the Governor  
12 1700 West Washington  
Phoenix, Arizona 85007

13 As to SRPMIC: Salt River Pima Maricopa  
14 Indian Community  
Route 1, Box 216  
15 Scottsdale, Arizona 85256  
Attn: Community Manager

16 As to the CAWCD: Central Arizona Water Conservation  
17 District  
23636 North Seventh Street  
18 Phoenix, Arizona 85024  
Attn: General Manager

19  
20 As to the SRP: Salt River Project  
21 P.O. Box 52025  
Phoenix, Arizona 85072-2025  
Attn: General Manager

22 As to the RWCD: Roosevelt Water Conservation  
23 District  
P.O. Box 168  
24 Higley, Arizona 85236  
Attn: General Manager

25 . . .

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As to the RID: Roosevelt Irrigation District  
P.O. Box 95  
Buckeye, Arizona 85326  
Attn: Superintendent

As to the City of Phoenix: City of Phoenix  
251 West Washington  
Phoenix, Arizona  
Attn: City Manager

As to the City of Scottsdale: City of Scottsdale  
3939 Civic Center Plaza  
Scottsdale, Arizona 85251  
Attn: City Manager

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

As to the City of Mesa: City of Mesa  
55 North Center Street  
P.O. Box 1466  
Mesa, Arizona 85201  
Attn: City Manager

As to the City of Tempe: City of Tempe  
31 East 5th Street  
Tempe, Arizona 85281  
Attn: City Manager

As to the City of Chandler: City of Chandler  
25 South Arizona Place  
Chandler, Arizona 85225  
Attn: City Manager

As to the Town of Gilbert: Town of Gilbert  
119 North Gilbert Road  
Gilbert, Arizona 85234  
Attn: Town Manager

or addressed to such other address as the party to receive such notice shall  
have designated by written notice given as required by this Paragraph 21.17.b.  
. . .  
. . .  
. . .

1 IN WITNESS WHEREOF, the parties have executed this Agreement dated as  
2 of the day and year first above written.

3 THE UNITED STATES OF AMERICA

4  
5 By: Manuel Lujan Jr.  
6 Secretary of the Interior

7 THE STATE OF ARIZONA

8  
9 Attest: Jim Sheumway By: Les Rafferty  
10 Secretary of State Governor

11 CENTRAL ARIZONA WATER CONSERVATION DISTRICT

12  
13 Attest: \_\_\_\_\_ By: \_\_\_\_\_  
14 Secretary President  
15 Approved as \_\_\_\_\_  
16 to Form: Laurel R. Miller  
17 General Counsel

18 SALT RIVER PIMA-MARICOPA INDIAN COMMUNITY

19 Attest: Leon T. Jim By: Samuel C. Cota  
20 Secretary President

21 Approved as \_\_\_\_\_  
22 to Form: M

23 SALT RIVER VALLEY WATER USERS' ASSOCIATION

24 Attest: Paul D. Hise By: John R. Laveen  
25 Its SECRETARY Its PRESIDENT

26 . . .



SALT RIVER PROJECT AGRICULTURAL IMPROVEMENT  
AND POWER DISTRICT

Attest: Paula Rose  
Its SECRETARY

By: [Signature]  
Its PRESIDENT

ROOSEVELT WATER CONSERVATION DISTRICT

Attest: Michael Lawrence  
Secretary

By: Walter H. K. [Signature]  
President

Approved as  
to Form: Michael [Signature]

ROOSEVELT IRRIGATION DISTRICT

Attest: Stanley H. [Signature]  
Secretary

By: [Signature]  
~~President~~ Board Member

Approved as  
to Form: E. C. [Signature]

CITY OF PHOENIX, Marvin A. Andrews, City  
Manager

Attest: Vicky [Signature]  
Clerk

By: [Signature]

Approved as  
to Form: [Signature]  
ACTING City Attorney

[Signature]  
Mayor, City of Phoenix

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CITY OF SCOTTSDALE

Attest: Mable Mayes  
City Clerk

By: Helen R. Fowler  
Mayor

Approved as  
to Form: Barbara R. Goldberg  
City Attorney

CITY OF GLENDALE

Attest: Jawegne Behm  
Clerk

By: [Signature]  
Mayor

Approved as  
to Form: \_\_\_\_\_  
City Attorney

CITY OF MESA

Attest: [Signature]  
Clerk

By: [Signature]  
City Manager

Approved as  
to Form: Paul Beltr  
City Attorney

CITY OF TEMPE

Attest: Helen R. Fowler  
Clerk

By: Harry E. Mitchell  
Mayor

Approved as  
to Form: [Signature]  
City Attorney

...  
...  
...

CITY OF CHANDLER

Attest: Cleora Ellsworth  
Acting Clerk

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

Approved as  
to Form: \_\_\_\_\_  
City Attorney

TOWN OF GILBERT

Attest: Daphne Liberty  
Clerk

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

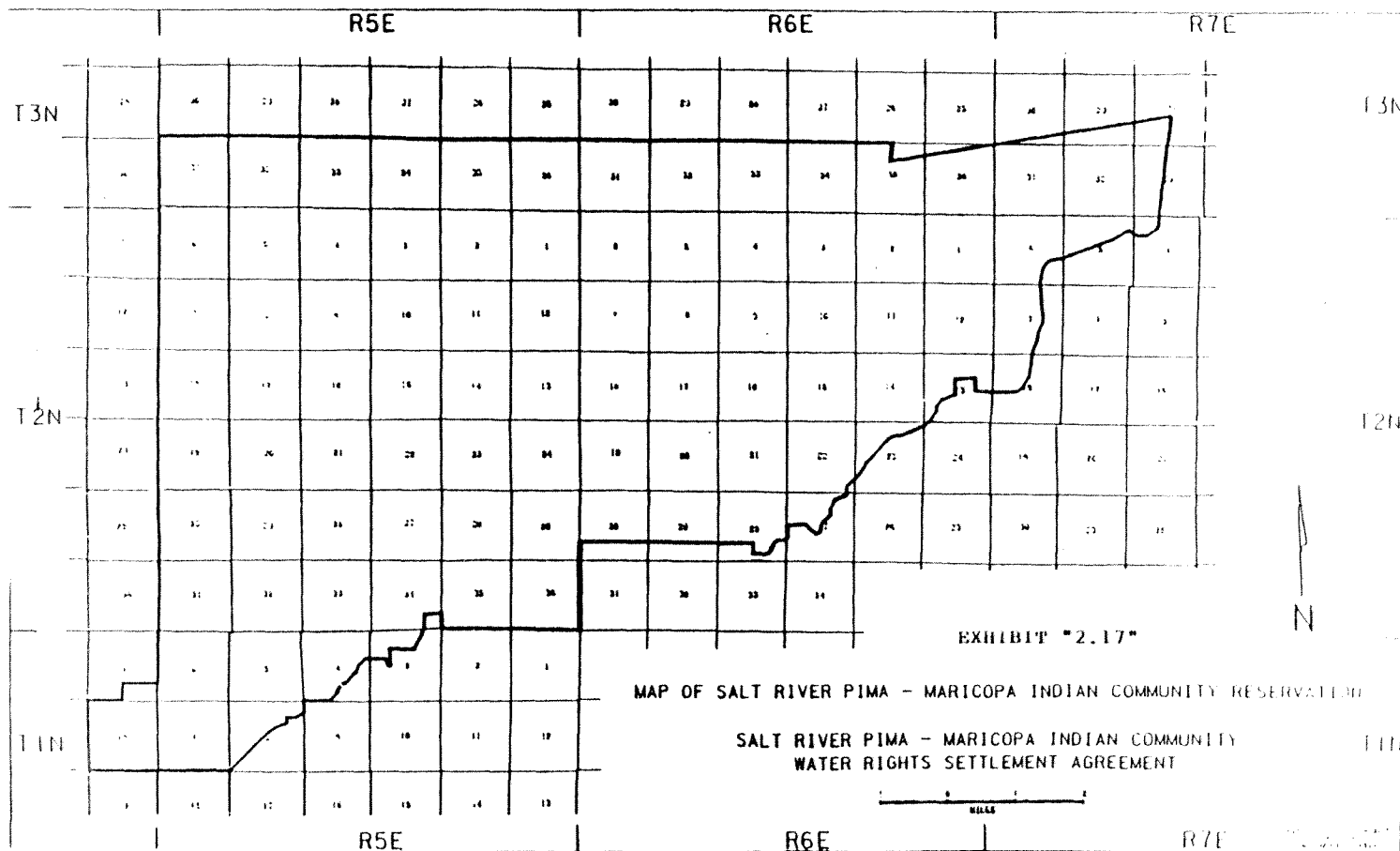
Approved as  
to Form: Will Ball  
City Attorney

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EXHIBITS TO AGREEMENT

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EXHIBIT "2.17"  
Map of SRPMIC Reservation





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EXHIBIT "3.a."

Salt River Pima-Maricopa Indian  
Community v. United States, et al.

CIV 82-745 PHX RGS



DO NOT FILE THIS COPY

UNITED STATES DISTRICT COURT  
DISTRICT OF ARIZONA

SALT RIVER PIMA-MARICOPA	)	No. CIV-82-745-PHX RGS
INDIAN COMMUNITY,	)	
	)	STIPULATION FOR DISMISSAL
Plaintiff,	)	WITH PREJUDICE
	)	
v.	)	
	)	
UNITED STATES OF AMERICA,	)	
et al.,	)	
	)	
Defendants.	)	

The plaintiff and the defendants advise the Court that the plaintiff has entered into an agreement with major water users in the Salt River Valley which compromises and resolves all of the claims asserted in this litigation. The parties to that agreement are specifically required by its terms to bring about the dismissal of this litigation with prejudice. Accordingly the parties stipulate to the entry of an order dismissing all of the claims asserted in the First Amended Complaint with prejudice, the parties to bear their own costs and attorneys' fees.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_.

United States of America

Shea & Wilks

By: Stephen M. McNamee  
 Stephen M. McNamee  
 Arizona Bar #002370  
 United States Attorney  
 Department of Justice  
 George William Sherk

By: Philip J. Shea  
 Philip J. Shea  
 Arizona Bar #001183  
 Attorneys for the Plaintiff

DUPLICATE

Jennings, Strouss & Salmon

Snell & Wilmer

By:

John B. Weldon  
Arizona Bar #003701  
Attorneys for Salt River  
Agricultural Improvement  
District and  
Salt River Valley Water  
Users Association

By:

John J. Bouma  
Arizona Bar #011808  
Daniel J. McAuliffe  
Arizona Bar #003435  
Attorneys for Arizona  
Public Service Company,  
Southern California  
Edison Company, Public  
Service Company of New  
Mexico, El Paso Electric  
Company, Department of  
Water and Power of the  
City of Los Angeles and  
Southern California  
Public Power Authority

Bill Stephens, P.C.

By:

Bradford T. Brown  
Arizona Bar #009034  
Attorney for the Cities of  
Phoenix, Tempe, Glendale,  
Scottsdale and Mesa, and the  
Town of Youngtown

Burch & Cracchiolo, P.C.

Ryley, Carlock & Applewhite

By:

Edwin C. Bull  
Arizona Bar #006306  
Attorneys for Roosevelt  
Irrigation District

By:

Michael J. Brophy  
Arizona Bar #004952  
Attorneys for Roosevelt  
Water Conservation  
District

DUPLICATE

UNITED STATES DISTRICT COURT  
DISTRICT OF ARIZONASALT RIVER PIMA-MARICOPA  
INDIAN COMMUNITY,

Plaintiff,

v.

UNITED STATES OF AMERICA,  
et al.,

Defendants.

No. CIV-82-745-PHX RGS

ORDER OF DISMISSAL  
WITH PREJUDICE

DUPLICATE

The Court has considered the stipulation of the parties for an order dismissing the action with prejudice, the parties to bear their own costs, and it appearing that there is good cause to grant the relief as stipulated, it is

ORDERED that the First Amended Complaint is dismissed with prejudice and the parties will bear their own costs.

Done on this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_.

Hon. Roger G. Strand  
Judge of the District Court



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EXHIBIT "3.b."

Salt River Pima-Maricopa Indian  
Community v. H. S. Aguilar, et al.

CIV 82-2162 PHX PGR

DUPLICATE

UNITED STATES DISTRICT COURT  
DISTRICT OF ARIZONA

SALT RIVER PIMA-MARICOPA	)	No. CIV-82-2162-PHX PGR
INDIAN COMMUNITY,	)	
	)	NOTICE OF DISMISSAL WITH
Plaintiff,	)	PREJUDICE AND MOTION AND
	)	NOTICE FOR ORDER OF DISMISSAL
v.	)	
	)	
H. S. AGUILAR, et al.,	)	
	)	
Defendants.	)	

The plaintiff dismisses its claims with prejudice pursuant to Rule 41(a)1, against all defendants who have not served an answer or a motion for summary judgment.

To all defendants who have served an answer or a motion for summary judgment, please take notice that the plaintiff will appear before the Court at Room \_\_\_\_ of the Federal Building at 230 North First Avenue, Phoenix, Arizona, on the \_\_\_\_ day of \_\_\_\_\_, 19\_\_, to move for an order pursuant to Rule 41(a)2, Federal Rules of Civil Procedure, dismissing this action with prejudice, the parties to bear their own costs, on the ground that the plaintiff has entered into an agreement with various major water users in the Salt River Valley which resolves all of the . . . .

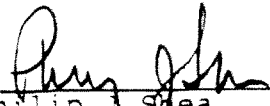
1 plaintiff's claims and which requires the plaintiff to secure the  
2 dismissal of this action.

3 Dated this \_\_\_\_ day of \_\_\_\_\_, 19\_\_.

4 SHEA & WILKS

5  
6 **DUPLICATE**

7 By

  
Philip J. Shea  
Arizona Bar #001183  
114 W. Adams, #200  
Phoenix, AZ 85003

9  
10 [This Notice and Motion will be accompanied by a certificate of  
11 service upon all persons who have made appearances in this action  
12 as of the time certificate of service is made.]  
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Done on this \_\_\_\_ day of \_\_\_\_\_, 19\_\_.

DUPLICATE

Hon. Paul G. Rosenblatt  
District Court Judge

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EXHIBIT "3.c."

United States of America on Behalf of  
the Salt River Pima-Maricopa Indian Community,  
et al., v. City of Phoenix, et al.

CIV. 82-2173-PHX WPC

*DO NOT FILE THIS COPY*

Stephen M. McNamee  
United States Attorney  
230 N. First Avenue  
Phoenix, AZ 85025  
Tel: 602-261-3921

DUPLICATE

IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF ARIZONA

UNITED STATES OF AMERICA,	)	No. CIV-82-2173-PHX WPC
on behalf of the SALT RIVER	)	
PIMA-MARICOPA INDIAN	)	
COMMUNITY,	)	
	)	NOTICE OF DISMISSAL WITH
Plaintiff,	)	PREJUDICE
	)	
v.	)	
	)	
CITY OF PHOENIX, et al.,	)	
	)	
Defendants.	)	

The plaintiff advises the Court that its claims have been resolved under the terms of an agreement between the Salt River Pima-Maricopa Indian Community and major water users in the Salt River Valley. This agreement requires that this action be dismissed with prejudice. Summons and complaint have not been served on any of the defendants and no defendant has served an answer or motion for summary judgment.

Accordingly, the plaintiff gives notice pursuant to Rule 41(a)(1), Federal Rules of Civil Procedure, that the complaint is . . .

1 dismissed with prejudice, all parties to bear their own costs and  
2 attorneys' fees.

3 Dated this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_.

4 UNITED STATES OF AMERICA

5  
6 By: \_\_\_\_\_

7 Steven E. Carroll  
8 California Bar #55030  
9 Department of Justice

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DUPLICATE



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EXHIBIT "3.d."

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Town of Gilbert v. The Roosevelt  
Water Conservation District, et al.

13

CIV 85-2600 PHX CAM

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DUPLICATE

**DO NOT FILE THIS COPY**

UNITED STATES DISTRICT COURT

DISTRICT OF ARIZONA

TOWN OF GILBERT, ARIZONA, a  
Municipal Corporation,

Plaintiff,

v.

THE ROOSEVELT WATER  
CONSERVATION DISTRICT, a body  
politic; THE UNITED STATES OF  
AMERICA; DONALD HODEL,  
Secretary of the United  
States Department of  
Interior, THE UNITED STATES  
DEPARTMENT OF INTERIOR;  
EDWARD M. HALLENBECK,  
Regional Director of the  
Lower Colorado Region of the  
United States Bureau of  
Reclamation; THE UNITED  
STATES BUREAU OF RECLAMATION;  
THE CENTRAL ARIZONA WATER  
CONSERVATION DISTRICT, a body  
politic; KATHLEEN FERRIS,  
Director of the Arizona  
Department of Water  
Resources; THE ARIZONA  
DEPARTMENT OF WATER RESOURCES,  
an agency of the State of  
Arizona,

Defendants.

CAUSE NO. CIV 85-2600  
PHX CAM

STIPULATION AND JOINT MOTION  
FOR JOINDER OF ADDITIONAL  
PARTIES PLAINTIFF, WAIVER OF  
AMENDED COMPLAINT AND TIME  
WITHIN WHICH TO ANSWER,  
INCORPORATION OF PRIOR ANSWERS  
TO THE COMPLAINT AND ORDER

The parties in the above-entitled matter, together with  
the City of Mesa, Arizona, a municipal corporation and body politic

1 of the State of Arizona ("Mesa"), and the Town of Chandler,  
2 Arizona, a municipal corporation and a body politic of the State of  
3 Arizona ("Chandler"), hereby stipulate and agree, in accordance  
4 with Rules 15 and 19, Federal Rules of Civil Procedure, that Mesa  
5 and Chandler may be joined as parties Plaintiff to the above-  
6 entitled action;

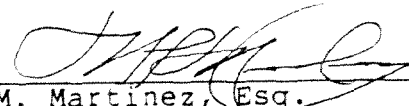
7 FURTHER, the parties stipulate upon joinder of Mesa and  
8 Chandler as parties Plaintiff, that the original Complaint, as  
9 amended, may and shall be deemed as the Complaint of Mesa and  
10 Chandler, and Mesa and Chandler stipulate and agree that the  
11 answers of the Defendants may and shall serve as answers to the  
12 Complaint of Mesa and Chandler;

13 FURTHER, the parties stipulate and agree that Mesa and  
14 Chandler shall be bound by the Order of this Court entered  
15 September 25, 1986, in the above-entitled action.

16 DATED this \_\_\_\_ day of \_\_\_\_\_, 19\_\_.

17 MARTINEZ & CURTIS, P.C.


18 By

19   
Jay M. Martinez, Esq.  
20 Arizona Bar #002367  
2712 North Seventh Street  
21 Phoenix, Arizona 85006-1003  
Attorneys for Plaintiff

22 DUPLICATE

23 CITY OF MESA, ARIZONA

24 By

25   
Bradford T. Brown, Esq.  
26 Arizona Bar #009034  
55 North Center  
Post Office Box 1466  
Mesa, Arizona 85201  
Attorneys for City of Mesa



CITY OF CHANDLER, ARIZONA

By Karen S. Gaylord for  
Maureen R. George, Esq.  
Arizona Bar #004782  
100 East Buffalo  
Chandler, Arizona 85224  
Attorneys for City of Chandler

ARIZONA DEPARTMENT OF WATER RESOURCES

By Scott D. Larmore  
Scott D. Larmore, Esq.  
Arizona Bar #005737  
Barbara A. Markham, Esq.  
Arizona Bar #009205  
99 East Virginia  
Phoenix, Arizona 85004  
Attorneys for Defendant DWR and  
N. W. Plummer, Its Director

CENTRAL ARIZONA WATER CONSERVATION  
DISTRICT

By Ralph E. Hunsaker  
Ralph E. Hunsaker, Esq.  
Arizona Bar #001409  
One East Camelback Road, Suite 1100  
Phoenix, Arizona 85012-1656  
Attorneys for Defendant CAWCD

By Douglas K. Miller  
Douglas K. Miller, Esq.  
Arizona Bar #005264  
23636 N. Seventh Street  
Phoenix, Arizona 85024  
Attorney for Defendant CAWCD

DUPLICATE

DEPARTMENT OF JUSTICE

By George William Sherk  
Land and National Resources  
Division  
Benjamin Franklin Station  
P. O. Box 7415  
Washington, D.C. 20044-7415  
Attorneys for Federal Defendants

RILEY, CARLOCK & APPLEWHITE, P.A.

By Michael J. Brophy  
Michael J. Brophy Esq.  
Arizona Bar #004952  
101 North First Avenue, 26th Floor  
Phoenix, Arizona 85003-1973  
Attorneys for Defendant Roosevelt  
Water Conservation District

. . . .

DUPLICATE

UNITED STATES DISTRICT COURT  
DISTRICT OF ARIZONA

TOWN OF GILBERT, ARIZONA, a ) CAUSE NO. CIV 85-2600  
Municipal Corporation, ) PHX CAM

Plaintiff, )

ORDER

v. )

THE ROOSEVELT WATER )  
CONSERVATION DISTRICT, a body )  
politic; THE UNITED STATES OF )  
AMERICA; DONALD HODEL, )  
Secretary of the United )  
States Department of )  
Interior; THE UNITED STATES )  
DEPARTMENT OF INTERIOR; )  
EDWARD M. HALLENBECK, )  
Regional Director of the )  
Lower Colorado Region of the )  
United States Bureau )  
of Reclamation; THE UNITED )  
STATES BUREAU OF RECLAMATION; )  
THE CENTRAL ARIZONA WATER )  
CONSERVATION DISTRICT, a )  
body politic; KATHLEEN )  
FERRIS, Director of the )  
Arizona Department of Water )  
Resources; THE ARIZONA )  
DEPARTMENT OF WATER RESOURCES, )  
an agency of the State of )  
Arizona, )

Defendants. )

DUPLICATE

Pursuant to Stipulation and Joint Motion, and Good Cause  
appearing therefor,

1 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the City  
2 of Mesa, Arizona (hereinafter "Mesa"), and the Town of Chandler,  
3 Arizona (hereinafter "Chandler"), shall be joined and added as  
4 parties Plaintiff to the above-entitled action; upon joinder of  
5 Mesa and Chandler, the original Complaint, as amended, shall be  
6 deemed the Complaint of Mesa and Chandler; the Answers of Defen-  
7 dants shall serve as Answers to the Complaint of Mesa and Chandler  
8 and Mesa and Chandler will be bound by the Order of this Court,  
9 entered on September 25, 1986, in the above-entitled action.

10 DONE IN OPEN COURT \_\_\_\_\_.

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14 United States District Judge  
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DUPLICATE

## UNITED STATES DISTRICT COURT

## DISTRICT OF ARIZONA

TOWN OF GILBERT, ARIZONA, a  
Municipal Corporation,

Plaintiff,

v.

THE ROOSEVELT WATER  
CONSERVATION DISTRICT, a body  
politic; THE UNITED STATES OF  
AMERICA; DONALD HODEL,  
Secretary of the United  
States Department of  
Interior; THE UNITED STATES  
DEPARTMENT OF INTERIOR;  
EDWARD M. HALLENBECK, Regional  
Director of the Lower  
Colorado Region of the United  
States Bureau of Reclamation;  
THE UNITED STATES BUREAU OF  
RECLAMATION; THE CENTRAL  
ARIZONA WATER CONSERVATION  
DISTRICT, a body politic;  
KATHLEEN FERRIS, Director of  
the Arizona Department of  
Water Resources; THE ARIZONA  
DEPARTMENT OF WATER RESOURCES,  
an agency of the State of  
Arizona,

Defendants.

CAUSE NO. CIV 85-2600  
PHX CAM

STIPULATION FOR DISMISSAL  
WITH PREJUDICE

DUPLICATE

This matter having been fully and completely resolved  
among the parties, it is hereby stipulated between the Plaintiffs

1 and the Defendants, through their attorneys undersigned, that this  
2 matter may be dismissed with prejudice, the parties to bear their  
3 own costs and attorneys' fees.

4 DATED this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_.

5 MARTINEZ & CURTIS, P.C.

6  
7 By

Jay M. Martinez, Esq.  
Arizona Bar #002367  
2712 North Seventh Street  
Phoenix, Arizona 85006-1003  
Attorneys for Plaintiff

8  
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DUPLICATE

CITY OF MESA, ARIZONA

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Water Conservation District

## UNITED STATES DISTRICT COURT

## DISTRICT OF ARIZONA

TOWN OF GILBERT, ARIZONA, a ) CAUSE NO. CIV 85-2600  
Municipal Corporation, ) PHX CAM

Plaintiff, )

ORDER OF DISMISSAL

v. )

THE ROOSEVELT WATER )  
CONSERVATION DISTRICT, a body )  
politic; THE UNITED STATES OF )  
AMERICA; DONALD HODEL, )  
Secretary of the United )  
States Department of )  
Interior; THE UNITED STATES )  
DEPARTMENT OF INTERIOR; )  
EDWARD M. HALLENBECK, )  
Regional Director of the )  
Lower Colorado Region of the )  
United States Bureau of )  
Reclamation; THE UNITED )  
STATES BUREAU OF )  
RECLAMATION; THE CENTRAL )  
ARIZONA WATER CONSERVATION )  
DISTRICT, a body politic; )  
KATHLEEN FERRIS, Director of )  
the Arizona Department of )  
Water Resources; THE ARIZONA )  
DEPARTMENT OF WATER RESOURCES, )  
an agency of the State of )  
Arizona, )

Defendants. )

DUPLICATE

Pursuant to Stipulation, and Good Cause appearing  
therefor,



1           IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the  
2 above-entitled action be dismissed with prejudice, the parties to  
3 bear their own costs and attorneys' fees.

4           DONE IN OPEN COURT \_\_\_\_\_.

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United States District Judge

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EXHIBIT "3.e."

Gila River Adjudication

# SPECIMEN

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

IN THE GENERAL ADJUDICATION	)	
OF ALL RIGHTS TO USE WATER IN	)	W-1; W-2; W-3; W-4
THE GILA RIVER SYSTEM AND	)	
SOURCE	)	STIPULATION
	)	
	)	(Assigned to The Honorable
	)	Stanley Z. Goodfarb)
	)	

THIS STIPULATION, dated as of \_\_\_\_\_, 19\_\_, is entered into among the United States of America; the Salt River Pima-Maricopa Indian Community (SRPMIC); the Salt River Project Agricultural Improvement and Power District; the Salt River Valley Water Users' Association; the Roosevelt Water Conservation District; the Roosevelt Irrigation District; the Arizona Cities of Phoenix, Scottsdale, Glendale, Mesa, Tempe, and Chandler and the Town of Gilbert; and the Central Arizona Water Conservation District.

1.0      RECITALS

1.1      Recognizing that final resolution of pending litigation will take many years and entail great expense to all parties, continue economically and socially damaging limits to SRPMIC's access to water, prolong uncertainty as to the availability of

1 water supplies and seriously impair the long-term economic planning  
2 and development of all parties, SRPMIC and neighboring non-Indian  
3 communities have sought to settle their disputes and reduce the  
4 burdens of litigation.

5 1.2 The representatives of the United States of America, the  
6 State of Arizona, the Salt River Pima-Maricopa Indian Community,  
7 the Salt River Valley Water Users' Association, the Salt River  
8 Project Agricultural Improvement and Power District, the Roosevelt  
9 Water Conservation District, the Roosevelt Irrigation District, the  
10 Cities of Phoenix, Scottsdale, Glendale, Mesa, Tempe, and Chandler  
11 and the Town of Gilbert, Arizona, and the Central Arizona Water  
12 Conservation District have agreed to permanently settle the water  
13 rights of the Salt River Pima-Maricopa Indian Community and its  
14 members, to finally resolve pending litigation on water rights and  
15 damage claims, and to seek funding for implementation of the  
16 settlement.

17 1.3 It is recognized by all parties to this Stipulation that  
18 they must recognize long-standing vested water rights arising under  
19 federal law, state law, the Kent Decree, and through contractual  
20 relationships with the Salt River Valley Water Users' Association,  
21 the Salt River Project Agricultural Improvement and Power District  
22 and the United States. Settlement of these issues must also accom-  
23 modate the imperative need of the Cities of Phoenix, Scottsdale,  
24 Glendale, Mesa, Tempe, and Chandler, and the Town of Gilbert to  
25 satisfy increasing municipal and industrial water demands.

26 . . . .

1   1.4       It is the policy of the United States, in fulfillment of  
2   its trust responsibility to Indian tribes, to promote Indian self-  
3   determination and economic self-sufficiency, and to settle,  
4   wherever possible, the water rights claims of Indian tribes without  
5   lengthy and costly litigation.

6   1.5       The objective of this settlement and Stipulation is to  
7   resolve all outstanding water-related litigation and settle once  
8   and for always the water rights of the Salt River Pima-Maricopa  
9   Indian Community, and its members, and the owners of allotted lands  
10   within the Salt River Pima-Maricopa Indian Reservation based upon  
11   Federal, State and other laws by providing to SRPMIC sufficient  
12   water from various sources to irrigate 27,200 acres of agricultural  
13   land within the Salt River Pima-Maricopa Indian Reservation, 14,500  
14   acres of which are located south of the Arizona Canal and within  
15   the exterior boundaries of the Salt River Reservoir District  
16   (SRRD) and 12,700 acres of which are located north of the Arizona  
17   Canal and outside the exterior boundaries of the SRRD.

18   1.6       The complete Agreement (the Agreement), including all  
19   related and incorporated agreements, between the undersigned  
20   parties is attached hereto as Exhibit A. This Stipulation is not  
21   intended to supersede any term of the Agreement. The Agreement is  
22   intended to be enforceable among the undersigned parties in  
23   pursuing their claims in these proceedings.

24               NOW THEREFORE, in consideration of the premises and of  
25   the promises and agreements hereinafter set forth, the parties  
26   hereto stipulate and agree as follows:

1     2.0           DEFINITIONS

2                   This Stipulation will employ abbreviated terms which will  
3     have the meanings stated below.

4     2.1           "Additional Active Conservation Capacity" shall mean the  
5     difference between the Existing Active Conservation Capacity in  
6     Roosevelt Reservoir prior to modification of Roosevelt Dam and the  
7     Active Conservation Capacity after modification of Roosevelt Dam;  
8     and "Active Conservation Capacity" shall mean the reservoir  
9     capacity assigned to regulate reservoir outflow for irrigation,  
10    power, and M&I use; and "Existing Active Conservation Capacity"  
11    shall mean the Active Conservation Capacity in Roosevelt Reservoir  
12    prior to modification of Roosevelt Dam. The modifications referred  
13    to in this definition are modifications made as part of Plan 6.

14    2.2           "The Agreement" shall mean the agreement entered into  
15    between the parties to this stipulation dated as of February 12,  
16    1988, concerning the matters recited in this Stipulation.

17    2.3           "Allottees" shall mean owners of allotted land within the  
18    SRPMIC Reservation.

19    2.4           "Bartlett Dam Agreement" shall mean the agreement between  
20    the United States and the Salt River Valley Water Users' Associa-  
21    tion dated June 3, 1935, relating to Verde River storage works.

22    2.5           "CAP" shall mean the Central Arizona Project, a  
23    reclamation project constructed by the United States of America  
24    pursuant to the Colorado River Basin Project Act of September 30,  
25    1968, 82 Stat. 885, as amended.

26    . . .

1    2.6       "CAWCD" shall mean the Central Arizona Water Conservation  
2    District, a political subdivision of the State of Arizona, which is  
3    the Contractor under a contract with the United States of America,  
4    dated December 15, 1972 (Contract No. 14-06-W-245), for the deliv-  
5    ery of water and repayment of costs of the Central Arizona Project,  
6    as amended.

7    2.7       "Effluent" shall mean water which, after being withdrawn  
8    as groundwater or diverted as surface water, has been used for  
9    domestic, municipal or industrial purposes and which is available  
10   for reuse for any purpose, whether or not the water has been  
11   treated to improve its quality.

12   2.8       "Kent Decree" shall mean the decree dated March 1, 1910,  
13   entered in Patrick T. Hurley v. Charles F. Abbott, et al., Cause  
14   Number 4564, in the District Court of the Third Judicial District  
15   of the Territory of Arizona, in and for the County of Maricopa, and  
16   all decrees supplemental thereto.

17   2.9       "Plan 6" shall mean Plan 6 for the Regulatory Storage  
18   Division of the CAP which for the purposes of this Stipulation is  
19   limited to modifications to Roosevelt Dam on the Salt River.

20   2.10      "Plan 6 Agreement" shall mean the agreement among the  
21   United States; the CAWCD; the Flood Control District of Maricopa  
22   County; the SRP; the Arizona Cities of Chandler, Glendale, Mesa,  
23   Phoenix, Scottsdale and Tempe, and the State of Arizona; and the  
24   City of Tucson, for funding of Plan 6 facilities of the CAP and for  
25   other purposes, dated April 15, 1986, and any amendments or  
26   supplements thereto.



1    2.11        "RID" shall mean the Roosevelt Irrigation District, an  
2    irrigation district organized under the laws of the State of  
3    Arizona.

4    2.12        "RWCD" shall mean the Roosevelt Water Conservation  
5    District, an irrigation district organized under the laws of the  
6    State of Arizona.

7    2.13        "Secretary" shall mean the Secretary of the United States  
8    Department of the Interior or his duly authorized representative.

9    2.14        "SRP" shall mean the Salt River Project Agricultural  
10   Improvement and Power District, a political subdivision of the  
11   State of Arizona, and the Salt River Valley Water Users'  
12   Association, an Arizona corporation.

13   2.15        "SRPMIC" shall mean the Salt River Pima-Maricopa Indian  
14   Community, a community of Pima and Maricopa Indians organized under  
15   Section 16 of the Indian Reorganization Act of June 18, 1934, 48  
16   Stat. 987, and duly recognized by the Secretary.

17   2.16        "SRPMIC Reservation" shall mean that area of land shown  
18   on Exhibit "2.17" to the Agreement.

19   2.17        "SRRD" shall mean the Salt River Reservoir District as  
20   defined, on the effective date of the Agreement, in Article IV,  
21   Section 3, of the Articles of Incorporation of the Salt River  
22   Valley Water Users' Association.

23   2.18        "Salt River Pima-Maricopa Indian Community Water Rights  
24   Settlement Act of 1988" or "The Act" shall mean Public Law 100-512,  
25   October 20, 1988, 102 Stat. 2549.

26   . . .

1     3.0           STIPULATIONS AND AGREEMENTS

2           Pursuant to the Agreement between the parties, additional  
3     and subsidiary agreements in the form of contracts, stipulations  
4     for settlement of litigation and the entry of consent decrees and  
5     waivers of claims have been prepared and are incorporated in the  
6     Agreement.

7     4.0           TOTAL WATER REQUIREMENT AND LIMITATION

8           The SRPMIC Reservation land to be irrigated with the  
9     water provided by this Stipulation and the Agreement will be served  
10    with new modern delivery facilities. Utilizing a water duty of 4.5  
11    acre-feet per acre per year for the 14,500 acres located within the  
12    exterior boundaries of the SRRD and for the 12,700 acres located  
13    north of the Arizona Canal, the maximum annual water delivery  
14    requirement to SRPMIC, with the exception of "spill water"  
15    described in Paragraph 14.0 of the Agreement, measured at the  
16    turnouts from the CAP Granite Reef Aqueduct, turnouts from SRP main  
17    canals, and pump outlets from groundwater wells on the SRPMIC's  
18    reservation will be 65,250 acre-feet per year for the SRPMIC Reser-  
19    vation lands within the exterior boundaries of the SRRD and 57,150  
20    acre-feet per year for the SRPMIC Reservation lands north of the  
21    Arizona Canal.

22    5.0           SOURCES OF WATER

23           Water for the settlement will be provided from the  
24    sources and in the quantities as outlined in the tables below and  
25    as further defined in Paragraphs 7.0, 8.0, 9.0, 10.0, 11.0, 12.0  
26    and 13.0 of the Agreement.

1 5.1 For irrigation or other use on 14,500 acres of SRPMIC  
2 Reservation lands located south of the Arizona Canal, and within  
3 the exterior boundaries of the SRRD:

4		Estimated	Reference
5	Source	Quantity, (acre-feet per year)	Paragraph from the Agreement
6	Kent Decree water	18,776	7.0
7	Stored water from SRP	9,074	8.0
8	Cities' river water		
9	exchange for Colorado		
10	River water	20,000	12.0
11	Groundwater pumped		
12	by SRPMIC		
13	(long term average)	<u>17,400</u>	13.0
14	Sub-Total	65,250	

15 For irrigation or other use on SRPMIC Reservation lands  
16 located north or south of the Arizona Canal:

16		Estimated	Reference
17	Source	Quantity, (acre-feet per year)	Paragraph from the Agreement
18	CAP contractual		
19	entitlement	13,300	
20	Bartlett Dam		
21	Agreement water	20,000	9.0
22	RWCD	8,000	10.0
23	RID, City of		
24	Phoenix, SRP		
25	exchange water	10,000	11.0
26	Groundwater pumped by		
27	SRPMIC (long term avg.)	<u>5,850</u>	13.0
28	Sub-Total	<u>57,150</u>	
29	TOTAL	122,400	

1    5.3       Effluent developed on the SRPMIC Reservation from the  
2    sources listed in Paragraphs 6.1 and 6.2 of the Agreement shall be  
3    used for such purposes as SRPMIC may determine and shall not be  
4    included in the quantity restrictions of this Stipulation or the  
5    Agreement.

6    5.4       The priority of the water delivered to SRPMIC from the  
7    sources listed in Paragraphs 5.1 and 5.2 hereof shall be the  
8    priority for those sources as determined in the Gila Adjudication.

9    6.0       KENT DECREE WATER

10   6.1       In order that SRPMIC may use more fully its Kent Decree  
11   water entitlement, the United States will designate for use by the  
12   SRPMIC for storage of Kent Decree Water 7,000 acre-feet of the  
13   Additional Active Conservation Capacity in accordance with Para-  
14   graph 7.1 of the Agreement.

15   6.2       The Additional Active Conservation Capacity designated in  
16   Paragraph 7.1 of the Agreement will be for seasonal re-regulation  
17   only (no annual carry over past October 1) in accordance with  
18   Paragraph 7.2 of the Agreement.

19   6.3       SRP will provide temporary storage for the 7,000 acre-  
20   feet referred to in Paragraph 7.1 of the Agreement in its existing  
21   reservoirs on the Salt River for the SRPMIC Kent Decree Water until  
22   the earlier of: (1) The construction of the Additional Active  
23   Conservation Capacity is completed; (2) a declaration is made by  
24   the United States that such capacity will not be constructed, or  
25   (3) December 31, 2005; provided, however, that this temporary  
26   storage entitlement shall always be subject to spill as provided in

1 Paragraph 21.9 of the Agreement and that monthly evaporation will  
2 be charged at the rate of one-half of one percent of the Kent  
3 Decree stored water balance at the end of each month.

4 6.4 In the event of the occurrence of either condition  
5 described in Paragraph 6.3(2) or (3) of the Stipulation or 7.4(b)  
6 or (c) of the Agreement, and to satisfy the requirements of Para-  
7 graph 7.1 of the Agreement, the United States will provide at its  
8 cost new water in accordance with Paragraph 7.5 of the Agreement.

9 6.5 The Kent Decree water will be used only on SRPMIC Reser-  
10 vation land south of the Arizona Canal and inside the exterior  
11 boundary of the SRRD.

12 7.0 ADDITIONAL SRP STORED WATER

13 7.1 "Stored Water" is defined as that amount of water deliv-  
14 ered to SRPMIC by SRP from SRP reservoirs up to 9,074 acre-feet per  
15 year pursuant to Paragraphs 6.1 and 8.2 of the Agreement.

16 "Additional Stored Water" is defined as that amount of  
17 SRP water delivered to SRPMIC by SRP from SRP reservoirs in excess  
18 of 9,074 acre-feet per year pursuant to Paragraphs 8.2 through 8.7  
19 of the Agreement.

20 7.2 SRP will deliver annually Stored Water to SRPMIC at the  
21 Arizona Canal or South Canal as ordered by SRPMIC in accordance  
22 with the provisions of Paragraph 8.2 of the Agreement.

23 7.3 SRPMIC shall satisfy the conditions to receiving Addi-  
24 tional Stored Water outlined in Paragraphs 8.3 through 8.5 of the  
25 Agreement and shall receive no more Additional Stored Water than  
26 the amount stated in Paragraphs 8.4 through 8.7 of the Agreement.

1     8.0           RWCD WATER TRANSFERRED TO SRPMIC

2     8.1           During the term and extended term of the agreements  
3 referred to in Paragraph 10.1 of the Agreement, RWCD hereby directs  
4 SRP to deliver to SRPMIC 8,000 acre-feet per year from RWCD's  
5 entitlement as defined in Paragraphs 10.1 and 10.2 of the Agreement  
6 and in accordance with the terms of Paragraph 10.5 of the  
7 Agreement.

8     8.2           RWCD's direction for the delivery of water to SRPMIC  
9 pursuant to the terms of Paragraph 10.5 of the Agreement shall be  
10 binding upon its successors and assigns in accordance with  
11 Paragraph 10.6 of the Agreement.

12    9.0           CITIES' RIVER WATER EXCHANGE

13    9.1           During the term of the contracts referred to in Paragraph  
14 12.6 of the Agreement, SRP shall deliver to SRPMIC, as provided in  
15 Paragraphs 12.7 through 12.12 of the Agreement, up to 20,000 acre-  
16 feet of surface water annually for use only on the SRPMIC Reser-  
17 vation land south of the Arizona Canal and within the exterior  
18 boundaries of the SRRD.

19    10.0          SPILL WATER

20                   The parties to this Stipulation and the Agreement recog-  
21 nize that SRP and SRPMIC, as well as other water users, have  
22 asserted appropriative claims to the flood flow waters from the  
23 Salt and Verde Rivers in excess of the storage capacities of exist-  
24 ing SRP reservoirs on those rivers ("Spill Water"). Although the  
25 United States has filed a claim on behalf of SRPMIC for Spill  
26 Water, SRP shall prosecute its claim and that of SRPMIC to this

1 Spill Water in the Gila River Adjudication. Neither the SRPMIC nor  
2 the United States shall prosecute a separate claim for this Spill  
3 Water in the Gila River Adjudication or in any other administrative  
4 or judicial proceeding. The United States on its own behalf and on  
5 behalf of SRPMIC shall not challenge any claims to Spill Water in  
6 the Gila River Adjudication or in any other administrative or other  
7 judicial proceeding. All parties to this Stipulation and the  
8 Agreement other than SRPMIC and the United States reserve the right  
9 to assert claims to Spill Water, protest the Spill Water claims of  
10 SRP and SRPMIC or protest the validity of any appropriation of  
11 Spill Water, and/or seek appropriative rights wherein such Spill  
12 Water would be stored in Additional Active Conservation Capacity.

13 11.0 LIMITATIONS ON TRANSPORTATION AND USE OF SRP WATER

14 11.1 SRPMIC will not transport Kent Decree water, Stored  
15 Water, Additional Stored Water, Cities Exchange Water, or ground-  
16 water pumped within the boundaries of the SRRD to lands or uses  
17 outside that portion of the SRPMIC Reservation within the exterior  
18 boundaries of SRRD. Bartlett Dam water will not be transported  
19 outside the SRRD except as provided in Paragraph 12.0 of the  
20 Agreement.

21 11.2 Except as provided in Paragraph 19.0 of the Agreement,  
22 the water made available from the various sources under the Agree-  
23 ment is solely for the use within the SRPMIC Reservation. There  
24 are no restrictions on the purposes for which water may be used  
25 within the SRPMIC Reservation.

26 . . .

1    12.0        SRPMIC WAIVER OF CLAIMS

2    12.1        Except as provided in Paragraph 12.2 hereof, SRPMIC, on  
3    behalf of itself and its members, shall execute a waiver and  
4    release of:

5               (a) Any and all past, present and future claims of water  
6    rights or injuries to water rights (including water rights in  
7    groundwater, surface water, and effluent) for lands within the  
8    SRPMIC Reservation, from time immemorial to the date of execution  
9    of such waiver and release, which SRPMIC may have, or which it may  
10   have standing to assert on behalf of its members, against the  
11   United States, the State of Arizona and any agency or political  
12   subdivision thereof, or any other person, corporation or municipal  
13   corporation, under the laws of the United States or the State of  
14   Arizona; and

15              (b) Any and all future claims of rights to water  
16   (including water rights in groundwater, surface water, and efflu-  
17   ent) for lands within the SRPMIC Reservation, from and after the  
18   date of execution of such waiver and release, which SRPMIC may  
19   have, or which it may have standing to assert on behalf of its  
20   members, against the United States, the State of Arizona, and any  
21   agency or political subdivision thereof, or any other person,  
22   corporation, or municipal corporation, under the laws of the United  
23   States or the State of Arizona; and

24              (c) All past, present and future claims of water rights  
25   or injuries to water rights (including water rights in groundwater,  
26   surface water and effluent) for lands outside of the exterior



1 boundaries of the SRPMIC Reservation based upon aboriginal occu-  
2 pancy by the Pima and Maricopa Indians, which SRPMIC may have, or  
3 which it may have standing to assert on behalf of its members,  
4 against the United States, the State of Arizona, and any agency or  
5 political subdivision thereof, or any other person, corporation, or  
6 municipal corporation, under the laws of the United States or the  
7 State of Arizona.

8 Nothing herein shall prevent SRPMIC from participating with other  
9 entities in further activities to augment the water supply avail-  
10 able to the Salt River Valley. The waiver and release will be in  
11 the form set out in Exhibit "3.o" to the Agreement.

12 12.2 Notwithstanding the execution by SRPMIC of the waiver and  
13 release described in Paragraph 12.1 hereof, SRPMIC, its members,  
14 and the United States on their behalf, shall retain the right to  
15 assert the following claims:

16 (a) Any claim for damages to water quality; provided,  
17 however, that Paragraph 12.1 hereof shall be construed to bar  
18 SRPMIC and its members from asserting any claim for damages to  
19 water quality caused by (1) the withdrawal of groundwater in  
20 accordance with the Arizona Groundwater Management Act; (2) the  
21 parties' performance of their obligations under the Agreement;  
22 (3) changes to water quality caused by the delivery or commingling  
23 of water delivered from the CAP with any of the water described in  
24 paragraph 6.0 of the Agreement; or (4) any combination thereof.

25 . . .

26 . . .

1 (b) Claims against the United States as provided in  
2 Section 10 of the Salt River Pima-Maricopa Indian Community Water  
3 Rights Settlement Act of 1988 ("the Act").

4 (c) Claims of water rights or injuries to water rights,  
5 other than those based upon aboriginal occupancy by the Pima and  
6 Maricopa Indians, for lands outside of the exterior boundaries of  
7 the SRPMIC Reservation acquired by SRPMIC or the United States on  
8 behalf of SRPMIC subsequent to January 1, 1985.

9 (d) Claims in the Gila River Adjudication for the  
10 enforcement of SRPMIC's water rights as provided for in the  
11 Agreement.

12 (e) Claims against any person for the breach or enforce-  
13 ment of the terms of the Agreement or rights recognized therein.

14 12.3 Except for actions in the United States Claims Court, the  
15 United States and SRPMIC shall dismiss with prejudice all water and  
16 power-related litigation pending in Federal or State courts in  
17 which SRPMIC is a plaintiff or which has been brought by the United  
18 States on behalf of SRPMIC. The dismissals shall be in the form  
19 set out in Exhibits "3.a," "3.b," "3.c," and "3.f" of the  
20 Agreement.

21 12.4 Any entitlement to water of any individual member of  
22 SRPMIC for allotted lands within the SRPMIC Reservation shall be  
23 satisfied out of the water resources provided in the Agreement.

24 12.5 Except as provided in Section 10(d) of the Act, the  
25 United States shall not assert any claims against any person in its  
26 own right or on behalf of SRPMIC based upon (1) water rights or

1 injuries to water rights of SRPMIC, its members or Allottees; or  
2 (2) water rights or injuries to water rights held by the United  
3 States on behalf of SRPMIC, its members or Allottees.

4 12.6 The United States and SRPMIC waive their sovereign immu-  
5 nity from suit in Federal District Court in regard to any claim  
6 which relates to the interpretation or enforcement of the  
7 Agreement.

8 13.0 CAP WATER LEASE

9 13.1 The Agreement provides that the Secretary and SRPMIC will  
10 amend the SRPMIC CAP contract dated December 11, 1980, for the  
11 delivery of 13,300 acre feet of CAP water, to permit the leasing by  
12 SRPMIC of all of that CAP entitlement to the Cities of Chandler,  
13 Glendale, Scottsdale, Tempe, Mesa and Phoenix and the Town of  
14 Gilbert for a term of 99 years from the year 2000. The Agreement  
15 further provides the maximum annual amount of water to be used by  
16 SRPMIC as provided for in the Agreement will be reduced by the  
17 amount of CAP water leased for use outside the SRPMIC reservation.

18 13.2 The Agreement provides that, except for CAP water, no  
19 other water provided to SRPMIC pursuant to the Agreement shall be  
20 marketable by SRPMIC.

21 14.0 OTHER PROVISIONS

22 14.1 Disclaimer - Nothing in this Stipulation or the Agreement  
23 shall be construed as establishing any standard to be used for the  
24 quantification of Federal reserved rights, aboriginal claims, or  
25 any other Indian claims to water in any judicial or administrative  
26 proceeding.

1    14.2       Effective date of the Stipulation - The Stipulation shall  
2    be submitted to the Maricopa County Superior Court for its approval  
3    upon the execution of the Agreement by all parties thereto, and  
4    upon the execution of the exhibits to the Agreement by all parties  
5    indicated on the exhibits. Notwithstanding the Court's approval of  
6    the Stipulation, the rights and obligations of the parties under  
7    the Agreement shall not accrue or be enforceable until:

8               (a) The permits required to effect the RID exchange  
9    pursuant to Paragraph 11.0 of the Agreement have been granted by  
10   December 31, 1991, provided that this condition may be waived by  
11   SRPMIC in a writing delivered by SRPMIC to the parties to the  
12   Agreement by SRPMIC on or before December 30, 1991.

13              (b) The acts or events described in Sections 12(a)(1)  
14   through 12(a)(6) and in Section 12(a)(8) of the Act have all  
15   occurred by December 31, 1991.

16    14.3       Pursuant to a court ordered and approved procedure, the  
17    maximum annual water entitlement of SRPMIC and its members, as  
18    specified in the Agreement and this Stipulation, shall become  
19    binding and have the full effect of a valid legal judgment as  
20    against all persons who were entitled to file a statement of  
21    claimant in these consolidated proceedings. However, the quanti-  
22    ties of water to be provided from the sources specified in this  
23    Stipulation and in the Agreement to satisfy SRPMIC's annual  
24    entitlement, as specified in the Agreement and this Stipulation,  
25    shall be binding only on the parties to this Stipulation and to the  
26    Agreement. Except as among the parties to this Stipulation and to

1 the Agreement and except as to SRPMIC's annual water entitlement,  
2 as specified in the Agreement and this Stipulation, nothing in this  
3 Stipulation or in the Agreement shall be construed or interpreted  
4 as establishing a right to use water from the Gila River System and  
5 Source by any party to this Stipulation or to the Agreement.

6 14.4 If for any reason this Court fails to approve this Stipu-  
7 lation and Order, this Stipulation shall not bind any of the under-  
8 signed parties. If the Court approves this Stipulation and the  
9 judgment of this Court is reversed on appeal and no further appeal  
10 may be taken, the rights and obligations of the parties shall be as  
11 stated in the Agreement.

12 14.5 Nothing in this Stipulation or the Agreement shall  
13 prohibit or restrict any undersigned party from fully pursuing its  
14 claims in these consolidated proceedings, consistent with this  
15 Stipulation and the Agreement.

16 14.6 The Court shall direct the entry of final judgment in the  
17 form attached hereto because there is no just reason for delay and  
18 the partial judgment is properly final pursuant to Rule 54(b),  
19 Arizona Rules of Civil Procedure.

20 14.7 This Stipulation is not intended to supersede any term of  
21 the Agreement. In the event any of the terms of this Stipulation  
22 shall vary or conflict with any of the terms of the Agreement, the  
23 terms of the Agreement shall control.

24 IN WITNESS WHEREOF, the parties have executed this  
25 Stipulation as of the day and year first above written.

26 . . .

THE UNITED STATES OF AMERICA

By: Steven S. Canale  
Attorneys for the United  
States of America

By: Patrick Barry  
Attorneys for the United  
States of America

CENTRAL ARIZONA WATER CONSERVATION  
DISTRICT

By: Douglas K. Miller  
Douglas K. Miller  
Arizona Bar #005264

SALT RIVER PIMA-MARICOPA INDIAN  
COMMUNITY

By: Philip J. Shea  
Philip J. Shea  
Arizona Bar #001183

SALT RIVER VALLEY WATER USERS'  
ASSOCIATION

By: John B. Weldon, Jr.  
John B. Weldon, Jr.  
Arizona Bar #003701

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SALT RIVER PROJECT AGRICULTURAL  
IMPROVEMENT AND POWER DISTRICT

By: John B. Weldon, Jr.  
John B. Weldon, Jr.  
Arizona Bar #003701

ROOSEVELT WATER CONSERVATION DISTRICT

By: Michael J. Brophy  
Michael J. Brophy  
Arizona Bar #004952

ROOSEVELT IRRIGATION DISTRICT

By: Edwin C. Bull  
Edwin C. Bull  
Arizona Bar #006306

CITY OF PHOENIX, RODERICK G.  
McDOUGALL, City Attorney

By: M. James Callahan  
M. James Callahan  
Arizona Bar #004138  
Katherine Ott-Verberg  
Arizona Bar #004240  
Assistant City Attorneys  
251 West Washington, 8th Floor  
Phoenix, Arizona 85003  
Attorneys for the City of Phoenix

CITY OF SCOTTSDALE

By: Barbara R. Goldberg  
Barbara R. Goldberg  
Arizona Bar #010252

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CITY OF GLENDALE

By: Jennele M. Morris  
Jennele M. Morris  
Arizona Bar #007043

CITY OF MESA

By: Bradford T. Brown  
Bradford T. Brown  
Arizona Bar #009034

CITY OF TEMPE

By: Bradford T. Brown  
Bradford T. Brown  
Arizona Bar #009034

CITY OF CHANDLER

By: Maureen R. George  
Maureen R. George  
Arizona Bar #004782

TOWN OF GILBERT

By: Jay M. Martinez  
Jay M. Martinez  
Arizona Bar #002367

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6 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

7 IN AND FOR THE COUNTY OF MARICOPA

8 IN THE GENERAL ADJUDICATION )  
9 OF ALL RIGHTS TO USE WATER IN ) W-1; W-2; W-3; W-4  
10 THE GILA RIVER SYSTEM AND )  
SOURCE ) JUDGMENT

11  
12 JUDGMENT

13 The claims asserted herein by the Salt River Pima-  
14 Maricopa Indian Community and by the United States of America on  
15 behalf of the Community having been resolved by stipulation among  
16 the interested parties, this Court having reviewed and considered  
17 the substance of said stipulation, and other parties to this action  
18 having been given an opportunity to be heard on this matter,

19 It is Ordered and Adjudged:

20 That the Court hereby approves and adopts the Stipulation  
21 dated \_\_\_\_\_, as its decree of the rights of the Salt  
22 River Pima-Maricopa Indian Community in the waters subject to this  
23 proceeding which shall be incorporated into the final decree herein  
24 without further order;

25 . . .

26 . . .

1           The Court herein determines that there is no just reason  
2 for delay and the partial judgment is properly final pursuant to  
3 Rule 54(b), Arizona Rules of Civil Procedure.

4           Wherefore, the Court directs the entry of judgment,  
5 pursuant to the provisions of Arizona Rules of Civil Procedure  
6 54(b).

7           Dated at Phoenix, Arizona, this \_\_\_\_ day of \_\_\_\_\_,  
8 19\_\_.

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11 Judge, Superior Court  
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EXHIBIT "3.f."

Salt River Pima-Maricopa Indian Community  
v. The State of Arizona and Gene Hassell, Acting  
Commissioner of the Arizona State Land Department

No. CIV 79-185 PHX

DUPLICATE

1 SHEA & WILKS  
Philip J. Shea, #1183  
2 114 W. Adams, #200  
Phoenix, AZ 85013  
3 (602) 257-1126

4 ROBERT K. CORBIN  
Attorney General  
5 Joseph E. Clifford, SBA 001874  
Assistant Attorney General  
6 1275 West Washington  
Phoenix, AZ 85007  
7 (602) 542-1401

8 JENNINGS, STROUSS & SALMON  
John B. Weldon, Jr., #003701  
9 2 N. Central, #16th Floor  
Phoenix, AZ 85004-2393  
10 (602) 262-5865

## IN THE UNITED STATES DISTRICT COURT

## DISTRICT OF ARIZONA

13	SALT RIVER PIMA-MARICOPA INDIAN	)	CIV 79-185-PHX RGS
14	INDIAN COMMUNITY,	)	
		)	
15	Plaintiff,	)	STIPULATION FOR
		)	DISMISSAL WITH
16	-vs-	)	PREJUDICE
		)	
17	THE STATE OF ARIZONA and GENE	)	
	HASSELL, Commissioner of the	)	
18	Arizona State Land Department,	)	
		)	
19	Defendants,	)	
		)	
20	SALT RIVER VALLEY WATER USERS'	)	
	ASSOCIATION, an Arizona	)	
21	corporation, Intervenor.	)	

22

23 The parties advise the Court that the claims of the

24 plaintiff have been satisfied and released and accordingly they

25 . . .

26 . . .

1 stipulate to an order dismissing the complaint with prejudice  
2 without award of costs or attorneys' fees.

3 Dated this 19<sup>th</sup> day of January, 1990.

4 ROBERT K. CORBIN, Attorney  
5 General

SHEA & WILKS

6 By: [Signature]  
7 Assistant Attorney General  
8 Attorney for the Defendants

By: [Signature]  
Attorneys for the Plaintiff

9 JENNINGS, STROUSS & SALMON

10 DUPLICATE

11 By: [Signature]  
12 Attorneys for Intervenor

DUPLICATE

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONASALT RIVER PIMA-MARICOPA INDIAN ) CIV 79-185-PHX RGS  
COMMUNITY, )Plaintiff, ) ORDER OF DISMISSAL  
WITH PREJUDICE

-vs- )

THE STATE OF ARIZONA and GENE )  
HASSELL, Commissioner of the )  
Arizona State Land Department, )

Defendants, )

SALT RIVER VALLEY WATER USERS' )  
ASSOCIATION, an Arizona )  
corporation, )

Intervenor. )

The Court has been advised that the plaintiff's claims  
have been satisfied and released and, there being good cause, it is

ORDERED that the complaint is dismissed with prejudice,  
the parties to bear their own costs and attorneys' fees.

Done on this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_.

Hon. Roger G. Strand  
District Court Judge





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EXHIBIT "3.g."

Salt River Pima-Maricopa Indian Community  
v. Salt River Valley Water Users' Association, et al.,

No. CIV 83-2500-PHX WPC

(Not executed by virtue of  
prior dismissal of the litigation)

IN THE UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

SALT RIVER PIMA-MARICOPA	)	No. 86-2819
INDIAN COMMUNITY,	)	
	)	STIPULATION FOR DISMISSAL
Plaintiff-Appellant,	)	OF APPEAL
	)	
-vs-	)	(Appeal from District of
	)	Arizona Cause No. CIV
SALT RIVER VALLEY WATER	)	83-2500 PHX WPC)
USERS' ASSOCIATION, an	)	
Arizona corporation; and	)	
SALT RIVER PROJECT	)	
AGRICULTURAL IMPROVEMENT AND	)	
POWER DISTRICT, an Arizona	)	
municipal corporation,	)	
	)	
Defendants-Appellees.	)	

The parties stipulate pursuant to Rule 42(b), Rules of Civil Appellate Procedure, that this proceeding be dismissed without provision for costs.

Dated this \_\_\_\_ day of \_\_\_\_\_, 19\_\_.

SHEA & WILKS

JENNINGS, STROUSS & SALMON

By: \_\_\_\_\_  
Philip J. Shea  
Arizona Bar #001183  
Attorneys for the Appellant

By: \_\_\_\_\_  
John B. Weldon, Jr.  
Arizona Bar #003701  
Attorneys for the Appellees

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EXHIBIT "3.h.1."

12

River Water Exchange Contract  
City of Chandler, Arizona

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Exhibit "3.h.1"  
RIVER WATER EXCHANGE CONTRACT  
City of Chandler, Arizona

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Exhibit "3.h.1"  
RIVER WATER EXCHANGE CONTRACT  
City of Chandler, Arizona

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Exhibits

Exhibit "A"	CAP Master Repayment Contract
Exhibit "B"	Assignment among RWCD, CAWCD and the United States
Exhibit "C"	SRPMIC Agreement Water Calculations (Tables 1 and 2)

1 UNITED STATES  
2 DEPARTMENT OF THE INTERIOR  
3 BUREAU OF RECLAMATION

4 CONTRACT AMONG THE UNITED STATES,  
5 THE CENTRAL ARIZONA WATER CONSERVATION DISTRICT,  
6 AND THE CITY OF CHANDLER, ARIZONA,  
7 PROVIDING FOR WATER SERVICE

8 ARTICLE 1  
9 Preamble

10 1. THIS CONTRACT, made as of the 12th day of February,  
11 1988, in pursuance of the Salt River Pima-Maricopa Indian Community  
12 Water Rights Settlement Act of 1988, P.L. 100-512, 102 Stat. 2549,  
13 and the Act of June 17, 1902 (32 Stat. 388), and acts amendatory  
14 thereof or supplementary thereto, including but not limited to the  
15 Boulder Canyon Project Act of December 21, 1928 (45 Stat. 1057),  
16 the Colorado River Basin Project Act of September 30, 1968 (82  
17 Stat. 885), as amended, hereinafter referred to collectively as the  
18 "Federal Reclamation Laws," and the various authorities and  
19 responsibilities of the Secretary of the Interior in relation to  
20 Indians and Indian Tribes, as contained in Title 25 U.S.C. and 43  
21 U.S.C. § 1457, among THE UNITED STATES OF AMERICA, acting through  
22 the Secretary of the Interior, the CENTRAL ARIZONA WATER  
23 CONSERVATION DISTRICT, hereinafter referred to as "CAWCD," a multi-  
24 county water conservation district organized under the laws of  
25 Arizona, with its principal place of business in Phoenix, Arizona,  
26 and the CITY OF CHANDLER, Arizona, hereinafter referred to as the  
"City," with its principal place of business at 200 East  
Commonwealth, Chandler, Arizona;

1 WITNESSETH, THAT:  
2

3 ARTICLE 2  
4 Explanatory Recitals

5 2. WHEREAS, the Colorado River Basin Project Act  
6 provides, among other things, that for the purposes of furnishing  
7 irrigation and municipal and industrial water supplies to water  
8 deficient areas of Arizona and western New Mexico through direct  
9 diversion or exchange of water, control of floods, conservation and  
10 development of fish and wildlife resources, enhancement of recrea-  
11 tion opportunities, and for other purposes, the Secretary of the  
12 Interior shall construct, operate, and maintain the Central Arizona  
13 Project; and

14 WHEREAS, pursuant to the provisions of Arizona Revised  
15 Statutes §§ 48-3701, et seq., CAWCD has been organized with the  
16 power to enter into a contract or contracts with the Secretary of  
17 the Interior to accomplish the purposes of Arizona Revised Sta-  
18 tutes, §§ 48-3701, et seq.; and

19 WHEREAS, pursuant to Section 304(b)(1) of the Colorado  
20 River Basin Project Act, the Secretary of the Interior has deter-  
21 mined that it is necessary to effect repayment of the cost of con-  
22 structing the Central Arizona Project pursuant to a master contract  
23 and that the United States, together with CAWCD, shall be a party  
24 to contracts that are in conformity with and subsidiary to the  
25 master contract; and  
26 . . . .

1           WHEREAS, the United States and CAWCD entered into Con-  
2     tract No. 14-06-W-245 dated December 15, 1972, which was amended on  
3     December 1, 1988, hereinafter referred to as the "Repayment  
4     Contract," a copy of which is attached hereto as Exhibit "A" and by  
5     this reference made a part hereof, whereby CAWCD agrees to repay to  
6     the United States the reimbursable costs of the Central Arizona  
7     Project allocated to CAWCD; and

8           WHEREAS, the City has entered into a water service sub-  
9     contract with the United States and CAWCD for municipal and  
10    industrial water service from water supplies available from the  
11    Central Arizona Project, Contract No. 5-07-30-W0070; and

12          WHEREAS, the United States, the State of Arizona, the  
13    Salt River Pima-Maricopa Indian Community, the Salt River Valley  
14    Water Users' Association, the Salt River Project Agricultural  
15    Improvement and Power District, the Roosevelt Water Conservation  
16    District, the Roosevelt Irrigation District, the Cities of Phoenix,  
17    Scottsdale, Glendale, Mesa, Tempe, and Chandler and the Town of  
18    Gilbert, Arizona, and CAWCD have agreed to permanently settle the  
19    water rights of the Salt River Pima-Maricopa Indian Community and  
20    its members, to finally resolve pending litigation on water rights  
21    and damage claims, and to seek funding for implementation of the  
22    settlement; and

23          WHEREAS, the United States, acting through the Secretary  
24    of the Interior, has both a trust and fiduciary responsibility to  
25    make the Salt River Pima-Maricopa Indian reservation a permanent  
26    . . .



1 Tribal homeland for the Salt River Pima-Maricopa Indian Community;  
2 and

3 WHEREAS, as part of the water rights settlement with the  
4 Salt River Pima-Maricopa Indian Community, the United States is  
5 required to contract with the City for the delivery through Central  
6 Arizona Project facilities of not to exceed four thousand two hun-  
7 dred seventy-eight (4,278) acre-feet per year of Colorado River  
8 water which was not included in the determination of water supplies  
9 available to the Central Arizona Project, plus certain additional  
10 amounts of Central Arizona Project water to be made available each  
11 year by the Roosevelt Water Conservation District or the Secretary  
12 of the Interior from Central Arizona Project water supplies other-  
13 wise available for agricultural use;

14 NOW, THEREFORE, in consideration of the mutual covenants  
15 herein contained, the parties hereto agree as follows:

16 ARTICLE 3  
17 Definitions

18 3. For purposes of this Contract:

19 (a) "Agricultural water" shall mean water made  
20 available from the Central Arizona Project for the commercial pro-  
21 duction of agricultural crops or livestock, including domestic use  
22 incidental thereto, on tracts of land operated in units of more  
23 than five acres.

24 (b) "CAWCD's service area" shall mean the area now  
25 included within the Central Arizona Water Conservation District,  
26 consisting of Maricopa, Pinal, and Pima Counties, Arizona, and such

1 other counties as may hereafter become part of the District, exclu-  
2 sive of any Indian reservation land lying wholly or partly within  
3 said Counties.

4 (c) "Central Arizona Project" or "CAP" or "project"  
5 shall mean the project and works authorized by Section 301(a) of  
6 the Colorado River Basin Project Act and constructed by the United  
7 States pursuant to the provisions of said Act.

8 (d) "Cities" shall mean the City of Chandler, the  
9 City of Glendale, the City of Scottsdale, the City of Tempe, the  
10 City of Mesa, the City of Phoenix, and the Town of Gilbert.

11 (e) "Colorado River water" shall mean that Colorado  
12 River mainstream water to be delivered to the City under this  
13 Contract which has a Colorado River priority pre-dating September  
14 30, 1968.

15 (f) "Contracting Officer" shall mean the Secretary  
16 or his authorized designee acting on his behalf.

17 (g) "Distribution works" shall mean those facili-  
18 ties constructed or used for the purpose of distributing water to  
19 or within the City's service area after said water has been trans-  
20 ported through the water supply system to the City's project  
21 turnout(s).

22 (h) "Ground water recharge" shall mean the recharge  
23 of water pursuant to title 45, chapter 2, article 13, Arizona  
24 Revised Statutes, or the underground storage and recovery of water  
25 pursuant to title 45, chapter 3, Arizona Revised Statutes, or as  
26 said statutes may hereafter be amended or revised.

1 (i) "Miscellaneous water" shall mean water made  
2 available from the Central Arizona Project, or by exchange for such  
3 water, for recreational and fish and wildlife purposes at other  
4 than project facilities, and which has a lesser priority of use  
5 than agricultural water.

6 (j) "Municipal and industrial water," hereinafter  
7 sometimes referred to as "M&I water," shall mean water made avail-  
8 able from the Central Arizona Project other than agricultural water  
9 and miscellaneous water.

10 (k) "Notice of completion" shall mean the notice  
11 which the Contracting Officer issues to CAWCD to announce the sub-  
12 stantial completion of the water supply system, or of those  
13 features of the project which include or comprise the water supply  
14 system, or of the entire project if constructed concurrently,  
15 thereby initiating payments therefor allocated to CAWCD.

16 (l) "OM&R" shall mean the care, operation, main-  
17 tenance, and replacement of project works.

18 (m) "Operating Agency" shall mean the entity or  
19 entities authorized to assume OM&R responsibility of transferred  
20 works and approved for that purpose by the Contracting Officer.

21 (n) "Assignment Water" shall mean that water to be  
22 delivered to the City under this Contract which is made available  
23 to the City by the Roosevelt Water Conservation District ("RWCD")  
24 or the Secretary of the Interior pursuant to the Assignment, dated  
25 as of February 12, 1988, among the United States, CAWCD, RWCD, and  
26 the Cities. A copy of the Assignment is attached hereto as Exhibit

1 Exhibit "B" and by this reference made a part hereof.

2 (o) "Project works" shall mean the principal works  
3 described in Section 301(a) of the Colorado River Basin Project  
4 Act, and appurtenances thereto, or as modified pursuant to the  
5 Repayment Contract, together with lands, interests in lands, and  
6 rights-of-way for such works and appurtenances.

7 (p) "Return flow" shall mean all agricultural, M&I,  
8 and miscellaneous waste water, seepage, and ground water which  
9 originates or results from Colorado River water or Assignment Water  
10 as defined herein, but shall not include any water delivered  
11 through the project works for ground water recharge purposes.

12 (q) "Secretary" shall mean the Secretary of the  
13 Interior of the United States or his duly authorized  
14 representative.

15 (r) "Settlement Agreement" shall mean the Agreement  
16 dated as of February 12, 1988 among the United States of America,  
17 the State of Arizona, the Salt River Pima-Maricopa Indian  
18 Community, the Salt River Project Agricultural Improvement and  
19 Power District, the Salt River Valley Water Users' Association,  
20 RWCD, the Roosevelt Irrigation District, the Cities, and CAWCD.

21 (s) "Subcontractor" shall mean any irrigation  
22 district, municipality, individual, or any other entity which  
23 enters into a water service subcontract with the United States and  
24 CAWCD in furtherance of the provisions of the Colorado River Basin  
25 Project Act.

26 . . .

1 (t) "Time of shortage" shall mean a calendar year  
2 for which the Secretary determines that a shortage exists pursuant  
3 to Section 301(b) of the Colorado River Basin Project Act, such  
4 that there is not sufficient water available for delivery from the  
5 Central Arizona Project in that year (after reduction in considera-  
6 tion of anticipated losses due to evaporation and seepage estimated  
7 to occur during transportation of such water through the water  
8 supply system and exclusive of "Colorado River water" as defined  
9 herein) to meet fully the entitlements of Indian contractors and  
10 non-Indian municipal and industrial subcontractors of Central  
11 Arizona Project water supplies.

12 (u) "Transferred works" shall mean such features of  
13 the project or such facilities of the water supply system as to  
14 which OM&R responsibility is transferred from the United States to  
15 the Operating Agency.

16 (v) "Water supply system" shall mean the Navajo  
17 Project, Havasu Pumping Plant, the Granite Reef, Salt-Gila and  
18 Tucson aqueducts and associated pumping plants and appurtenant  
19 works, but not including Tucson Terminal Storage or any distri-  
20 bution works.

21 (w) "Year" shall mean the period between January 1  
22 through the next succeeding December 31.

23 ARTICLE 4  
24 Term

25 4. This Contract shall become effective upon its  
26 execution by the parties hereto and its term shall be perpetual.

ARTICLE 5  
Delivery of Water

5. (a) The United States shall obtain rights to 22,000 acre-feet of annual consumptive use of mainstream Colorado River water in Arizona with a contractual priority pre-dating September 30, 1968, and which was not included in the determination of the water supplies available to the Central Arizona Project. The Secretary shall make such Colorado River water available for delivery as provided herein.

(b) Except as provided in Article 8 hereof, commencing with the year in which the Secretary issues notice of completion or the enforceability date of the Settlement Agreement, whichever is later, and for each year thereafter, the City shall be entitled to Colorado River water and Assignment Water in amounts not exceeding the following:

(i) Colorado River water -- 4,278 acre-feet;  
and

(ii) Assignment Water made available to the City by RWCD pursuant to Paragraph 2 of the Assignment attached hereto as Exhibit "B" -- 972 acre-feet; or

(iii) Assignment Water made available to the City by the Secretary pursuant to Paragraph 3 of the Assignment attached hereto as Exhibit "B" -- 583 acre-feet.

(c) The City's annual entitlement to Colorado River water under Subarticle 5(b)(i) hereof shall be deemed to be met if initially made available for delivery at CAWCD's project delivery

1 point on the Colorado River, and shall be subject to reduction on  
2 account of losses by reason of evaporation and seepage occurring  
3 during the transportation of such water through the water supply  
4 system to the City's project delivery point. Said losses occurring  
5 on the City's Colorado River water supplies shall be determined by  
6 the Contracting Officer or the Operating Agency, but shall not  
7 exceed the City's pro rata share of losses as compared to losses  
8 due to evaporation and seepage occurring during transportation  
9 through the water supply system of all water supplies delivered  
10 during a year.

11 (d) The City's entitlement to Assignment Water  
12 under Subparagraphs 5(b)(ii) and 5(b)(iii) hereof, and its rights  
13 and obligations with respect to such Assignment Water, shall be  
14 subject to the terms and conditions of the Assignment attached  
15 hereto as Exhibit "B".

16 (e) The City's entitlement to Colorado River water  
17 and Assignment Water under this Contract shall be in addition to  
18 the City's entitlement to Central Arizona Project water for munici-  
19 pal and industrial use under the City's Central Arizona Project M&I  
20 water service subcontract (Contract No. 5-07-30-W0070).

21 (f) During such periods as it operates and main-  
22 tains the Central Arizona Project, the United States shall deliver  
23 Colorado River water and Assignment Water to which the City is  
24 entitled under this Contract through the water supply system.  
25 Subject to the provisions of Subarticles 5(c) and 5(d) hereof, the  
26 United States shall use all reasonable diligence to make available

1 to the City the quantity of Colorado River water and Assignment  
2 Water specified in the schedule submitted by the City in accordance  
3 with Article 6 hereof. After transfer of OM&R responsibility to  
4 the Operating Agency, the United States shall make deliveries of  
5 Colorado River water and Assignment Water to the Operating Agency  
6 which shall make subsequent delivery of such water to the City as  
7 provided herein.

8 (g) The obligation of the United States and the  
9 Operating Agency to deliver Colorado River water and Assignment  
10 Water to the City under this Contract is subject to:

11 (i) The availability of such water for use in  
12 Arizona under the provisions of the Colorado River Compact, exe-  
13 cuted November 24, 1922; the Boulder Canyon Project Act, 45 Stat.  
14 1057, dated December 21, 1928; the Colorado River Basin Project  
15 Act, 82 Stat. 885, dated September 30, 1968, the contract between  
16 the United States and the State of Arizona dated February 9, 1944,  
17 the Opinion of the Supreme Court of the United States in the case  
18 of Arizona v. California et al., rendered June 3, 1963, 373 U.S.  
19 546, and the Decree of that court in said case, entered March 9,  
20 1964, 376 U.S. 340, as amended on February 28, 1966, at 383 U.S.  
21 268, and supplemented on January 9, 1979, at 439 U.S. 419, or as  
22 hereafter modified;

23 (ii) Executive A, Seventy-Eighth Congress,  
24 Second Session, a treaty between the United States of America and  
25 the United Mexican States, signed at Washington on February 3,  
26 1944, relating to the utilization of the waters of the Colorado and



1 Tijuana Rivers and of the Rio Grande from Fort Quitman, Texas, to  
2 the Gulf of Mexico, and Executive H, Seventy-eighth Congress,  
3 Second Session, a protocol signed at Washington on November 14,  
4 1944, supplementary to the Treaty, all hereinafter referred to as  
5 the Mexican Water Treaty;

6 (iii) The express understanding and agreement by  
7 the City that this Contract is subject to the condition that Hoover  
8 Dam and Lake Mead shall be used: first, for river regulation,  
9 improvement of navigation, and flood control; second, for irriga-  
10 tion and domestic uses and satisfaction of present perfected rights  
11 in pursuance of Article VIII of the Colorado River Compact approved  
12 by Section 13(a) of the Boulder Canyon Project Act; and third, for  
13 power; and furthermore, that this Contract is made upon the express  
14 condition and with the express covenant that all rights hereunder  
15 shall be subject to and controlled by the Colorado River Compact  
16 and that the United States and City shall observe and be subject to  
17 and controlled by said Colorado River Compact and Boulder Canyon  
18 Project Act in the construction, management, and operation of  
19 Hoover Dam, Lake Mead, canals and other works, and the storage,  
20 diversion, delivery, and use of water to be delivered to City here-  
21 under; and

22 (iv) The right of the United States or the  
23 Operating Agency temporarily to discontinue or reduce the amount of  
24 water to be delivered hereunder whenever such discontinuance or  
25 reduction is made necessary for purposes of investigations, in-  
26 spections, replacements, maintenance, or repairs to any works what-

1 soever affecting, utilized or, in the opinion of the Secretary or  
2 the Operating Agency, necessary for delivery of water hereunder, it  
3 being understood that so far as feasible the United States or the  
4 Operating Agency will (i) do so during periods of low water demands  
5 and (ii) give reasonable notice in advance of such temporary dis-  
6 continuance or reduction.

7 (h) Subject to the terms and conditions herein, the  
8 United States and the Operating Agency shall be obligated to  
9 deliver Colorado River water and Assignment Water to the City with-  
10 out regard as to whether or not the Salt River Pima-Maricopa Indian  
11 Community exercises its right to use any or all of the exchange  
12 water referred to in Paragraph 12 of the Settlement Agreement.

13 (i) Delivery and use of Colorado River water and  
14 Assignment Water under this Contract is further conditioned on the  
15 following, and the City hereby agrees that:

16 (i) All uses of Colorado River water,  
17 Assignment Water and return flow shall be consistent with Arizona  
18 water law unless such law is inconsistent with the Congressional  
19 directives applicable to the Central Arizona Project.

20 (ii) The system or systems through which  
21 Colorado River water and Assignment Water for municipal and indus-  
22 trial (including ground water recharge) purposes is conveyed after  
23 delivery to the City shall consist of pipelines, canals, distribu-  
24 tion systems, or other conduits provided and maintained with  
25 linings adequate in the Contracting Officer's judgment to prevent  
26 excessive conveyance losses.

1                   (iii) The City shall not pump, or within its  
2 legal authority, permit others to pump ground water from within the  
3 exterior boundaries of the City's service area, which has been  
4 delineated on a map filed with the Contractor and approved by the  
5 Contractor and the Contracting Officer, for use outside of said  
6 service area unless such pumping is permitted under Title 45,  
7 Chapter 2, Arizona Revised Statutes, as it may be amended from time  
8 to time, and the Contracting Officer, CAWCD, and the City shall  
9 agree, or shall have previously agreed, that a surplus of ground  
10 water exists and drainage is or was required; Provided, however,  
11 That such pumping may be approved by the Contracting Officer and  
12 CAWCD, and approval shall not be unreasonably withheld, if such  
13 pumping is in accord with the Colorado River Basin Project Act and  
14 upon submittal by the City of a written certification from the  
15 Arizona Department of Water Resources or its successor agency that  
16 the pumping and transportation of ground water is in accord with  
17 Title 45, Chapter 2, Arizona Revised Statutes, as it may be amended  
18 from time to time.

19                   (iv) The City shall not sell or otherwise  
20 dispose of or permit the sale or other disposition of Colorado  
21 River water and Assignment Water for use outside of Maricopa,  
22 Pinal, and Pima Counties; Provided, however, That this does not  
23 prohibit exchanges of Colorado River water and Assignment Water  
24 covered by separate agreements; and Provided, further, That this  
25 does not prohibit effluent exchanges with Indian tribes pursuant to  
26 . . .

1 Article 6.2 of the City's Central Arizona Project M&I water service  
2 subcontract (Contract No. 5-07-30-W0070).

3 (j) (i) Colorado River water and Assignment Water  
4 scheduled for delivery in any year under this contract may be used  
5 by the City or resold or exchanged by the City pursuant to appro-  
6 priate agreements approved by the Contracting Officer and CAWCD.  
7 If said water is resold or exchanged by the Contractor for an  
8 amount in excess of that which the City is obligated to pay under  
9 this Contract, the excess amount shall be paid forthwith by the  
10 City to CAWCD for application against the CAWCD's repayment obli-  
11 gation to the United States; Provided, however, That the Contractor  
12 shall be entitled to recover actual costs of transportation, treat-  
13 ment, and distribution, including but not limited to OM&R costs.

14 (ii) Colorado River water and Assignment Water  
15 scheduled for delivery in any year under this Contract that cannot  
16 be used, resold, or exchanged by the City may be made available by  
17 the Contracting Officer or the Operating Agency to other users. If  
18 such water is sold to or exchanged with other users, the City shall  
19 be relieved of its payments hereunder only to the extent of the  
20 amount paid to the Contracting Officer and the Operating Agency by  
21 such other users, but not to exceed the amount the City is obli-  
22 gated to pay under this Contract for said water.

23 (iii) In the event the City, the Contracting  
24 Officer, or the Operating Agency is unable to sell any portion of  
25 the Colorado River water or Assignment Water scheduled for delivery  
26 by the City but not required by the City in any year, the City

1 shall be relieved of the pumping energy portion of the OM&R charges  
2 associated with the undelivered water as determined by the Con-  
3 tracting Officer or the Operating Agency.

4 (k) The City shall have the right to use Colorado  
5 River water and Assignment Water received under this Contract for  
6 any purpose consistent with Arizona law, including ground water  
7 recharge.

8 ARTICLE 6  
9 Procedure for Ordering Water

10 6. At least six months prior to the delivery of  
11 Colorado River water and Assignment Water to the City under this  
12 Contract, the Contracting Officer or the Operating Agency shall  
13 issue a written notice of availability of such water to the City.  
14 The City will, in accordance with the procedures hereinafter set  
15 out, submit written schedules to the Contracting Officer and the  
16 Operating Agency showing the quantities of (i) Colorado River water  
17 and (ii) Assignment Water requested for delivery. The City shall  
18 submit a schedule which requests the delivery of all Assignment  
19 Water available to it. If the first notice of availability of  
20 water is issued to the City by the Contracting Officer or the  
21 Operating Agency prior to June 1 of any year, the first schedule  
22 for the balance of said year shall be submitted to the Contracting  
23 Officer and the Operating Agency within 30 days after the City's  
24 receipt of such notice. If such notice is issued after June 1 of  
25 any year, the first schedule shall be submitted to the Contracting  
26 Officer and the Operating Agency within 30 days after the City's

1 receipt of such notice and shall cover the balance of such year and  
2 the next succeeding year. Thereafter, the amounts, times, and  
3 rates of delivery of water to the City during any year shall be in  
4 accordance with a water delivery schedule for that year, such  
5 schedule to be determined in the following manner:

6 (a) On or before June 1 of each year, the Con-  
7 tracting Officer shall announce (i) the amount of Colorado River  
8 water and (ii) the amount of Assignment Water available for de-  
9 livery during the following year in a written notice to the  
10 Operating Agency and the City.

11 (b) On or before October 1 of each year, the City  
12 shall submit in writing to the Operating Agency and the Contracting  
13 Officer a water delivery schedule indicating the amounts of (i)  
14 Colorado River water and (ii) Assignment Water desired by the City  
15 during each month of the following year along with a preliminary  
16 schedule of water desired for the succeeding 2 years. The City  
17 shall schedule for delivery each year all Assignment Water avail-  
18 able to it for delivery during that year.

19 (c) Upon receipt of such schedule, the Contracting  
20 Officer and the Operating Agency shall review it and, after con-  
21 sultation with the City, shall make only such modifications to the  
22 schedule as are necessary to ensure that the amounts, times, and  
23 rates of delivery to the City are consistent with the delivery  
24 capability of the project, considering, among other things, the  
25 availability of water and the delivery schedules of all subcon-  
26 tractors of Central Arizona Project water service; Provided, That

1 this provision shall not be construed to reduce annual deliveries  
2 to the City.

3 (d) On or before November 15 of each year, the  
4 Contracting Officer or the Operating Agency shall determine and  
5 furnish to the City the water delivery schedule for the next suc-  
6 ceeding year which shall show the amounts of (i) Colorado River  
7 water and (ii) Assignment Water to be delivered to the City during  
8 each month of that year.

9 (e) The monthly water delivery schedules may be  
10 amended by the Contracting Officer or the Operating Agency upon the  
11 City's written request. Proposed amendments shall be submitted by  
12 the City within a reasonable time before the desired change is to  
13 become effective, and shall be subject to review and modification  
14 by the Contracting Officer or the Operating Agency in like manner  
15 as the schedule itself.

16 (f) In no event shall the Contracting Officer or  
17 the Operating Agency be required to deliver in any one month (i) an  
18 amount of Colorado River water greater than eleven percent (11%) of  
19 the City's maximum annual entitlement to Colorado River water under  
20 Subarticle 5(b)(i) of this Contract or (ii) an amount of Assignment  
21 Water greater than eleven percent (11%) of the City's maximum  
22 annual entitlement to Assignment Water under Subarticle 5(b)(ii) or  
23 5(b)(iii) of this Contract; Provided, however, That the Contracting  
24 Officer or the Operating Agency may deliver a greater percentage of  
25 such water in any month if such increased delivery is compatible  
26 with the overall delivery of Central Arizona Project water to CAP

1 subcontractors as determined by the Contracting Officer and the  
2 Operating Agency, and if the City agrees to accept such increased  
3 deliveries.

4 ARTICLE 7  
5 Points of Delivery--Measurement and  
6 Responsibility for Distribution of Water

7 7. (a) All water to be furnished to the City pursuant  
8 to this Contract shall be delivered at turnouts to be constructed  
9 by the United States at such point(s) on the water supply system as  
10 may be agreed upon in writing by the Contracting Officer and CAWCD,  
11 after consultation with the City. .

12 (b) Unless the United States and the City agree by  
13 contract to the contrary, the City shall construct and install, at  
14 its sole cost and expense, connection facilities required to take  
15 and convey such water from the turnouts to the City's service  
16 area. The City shall furnish, for approval of the Contracting  
17 Officer, drawings showing the construction to be performed by the  
18 Contractor within the water supply system right-of-way six months  
19 before starting said construction. The facilities may be in-  
20 stalled, operated, and maintained on the water supply system right-  
21 of-way subject to such reasonable restrictions and regulations as  
22 to type, location, method of installation, operation, and main-  
23 tenance as may be prescribed by the Contracting Officer.

24 (c) All water delivered to the City pursuant to  
25 this Contract shall be measured with equipment furnished and in-  
26 stalled by the United States and operated and maintained by the  
United States or by the Operating Agency. Upon the request of the



1 City or the Operating Agency, the accuracy of such measurements  
2 shall be investigated by the Contracting Officer or by the Operat-  
3 ing Agency and the City, and any errors which may be mutually  
4 determined to have occurred therein shall be adjusted; Provided,  
5 That in the event the parties cannot agree on the required adjust-  
6 ment, the Contracting Officer's determination shall be conclusive.

7 (d) Neither the United States nor the Operating  
8 Agency shall be responsible for the control, carriage, handling,  
9 use, disposal, or distribution of water beyond the delivery  
10 point(s) agreed to pursuant to Subarticle 7(a). The City shall  
11 hold the United States and the Operating Agency harmless on account  
12 of damage or claim of damage of any nature whatsoever for which  
13 there is legal responsibility, including property damage, personal  
14 injury, or death arising out of or connected with the City's con-  
15 trol, carriage, handling, use, disposal, or distribution of water  
16 beyond said delivery point(s).

17 (e) In addition to the right of the United States  
18 under Subarticle 8.3(a)(iv) of the Repayment Contract temporarily  
19 to discontinue or reduce the amount of water to be delivered  
20 through the Central Arizona Project, the United States or the  
21 Operating Agency may, after consultation with the City, temporarily  
22 discontinue or reduce the quantity of water to be furnished to the  
23 City as herein provided for the purpose of investigation, inspec-  
24 tion, maintenance, repair, or replacement of any CAP facilities or  
25 any part thereof necessary for the furnishing of water to the City  
26 under this Contract, but so far as feasible the United States or

1 the Operating Agency shall coordinate any such discontinuance or  
2 reduction with the City and shall give the City due notice in ad-  
3 vance of such temporary discontinuance or reduction, except in case  
4 of emergency, in which case no notice need be given. Neither the  
5 United States, its officers agents, and employees, nor the  
6 Operating Agency, its officers, agents, and employees, shall be  
7 liable for damages when, for any reason whatsoever, any such tempo-  
8 rary discontinuance or reduction in delivery of water occurs. If  
9 any such discontinuance or temporary reduction results in  
10 deliveries to the City of less water than what has been paid for in  
11 advance, the City shall be entitled to be reimbursed for the appro-  
12 priate proportion of advance payments of OM&R charges prior to the  
13 date of the City's next payment of OM&R charges or the City may be  
14 given credit toward the next payment of OM&R charges if the City  
15 should so desire.

16 ARTICLE 8  
17 Priority in Case of Shortage

18 8. (a) Subject to the provisions of Section 304(e) of  
19 the Colorado River Basin Project Act, in the event of a shortage of  
20 the water supplies available to the Central Arizona Project, as  
21 determined by the Contracting Officer after consultation with  
22 CAWCD, Assignment Water furnished to the City under this Contract  
23 shall be subject to reduction in the same manner and to the same  
24 extent as agricultural water under Central Arizona Project agricul-  
25 tural water service subcontracts.  
26 . . .

(b) In a time of shortage, the City's entitlement to Colorado River water under Subarticle 5(b)(i) of this Contract shall be determined by the following formula:

City's entitlement to Colorado River water in a time of shortage = 
$$\frac{[(X+Y) \cdot (A+B)/(C+D)] - [(X/D) \cdot A]^*}{1}$$

Where: X = the City's entitlement to Central Arizona Project water for M&I water use under Article 4.12 of Contract No. 5-07-30-W0070, as the same may be amended or supplemented from time to time;

Y = 5,056 acre-feet;

A = the total amount of water available from the Central Arizona Project for non-Indian M&I water use (after reduction on account of losses due to evaporation and seepage estimated to occur during transportation of such water through the water supply system and exclusive of "Colorado River water" as defined herein), as determined by the Contracting Officer in accordance with the method outlined in the Record of Decision of the Secretary published in the Federal Register on March 24, 1983;

B = the total amount of Colorado River water available to the Cities pursuant to this Contract with the City of Chandler and like contracts with the other Cities (after reduction on account of losses due to evaporation and seepage estimated to occur during transportation of such water through the water supply system);

C = 26,000 acre-feet.

D = the sum of all non-Indian municipal and industrial subcontractors' entitlements to Central Arizona Project water for M&I water use under Article 4.12 of all non-Indian CAP municipal and industrial subcontracts, as the same may be amended or supplemented from time to time;

\* It is the intent of the parties that this calculation be performed in a manner which is consistent with the method of calculation exemplified in Tables 1 and 2 attached hereto as Exhibit "C".

1 (c) Notwithstanding the provisions of Subarticle  
2 5(c) of this Contract, the City's entitlement to Colorado River  
3 water, as determined in accordance with the formula set forth in  
4 Subarticle 8(b) hereof, shall be made available to the City at the  
5 City's project turnout(s).

6 (d) In a time of shortage, any Colorado River water  
7 available from the 22,000 acre-feet to be obtained by the United  
8 States pursuant to Subarticle 5(a) hereof in excess of that neces-  
9 sary to satisfy the entitlement of the City under Subarticle 8(b)  
10 of this Contract and the entitlements of the other Cities under  
11 Subarticle 8(b) of like contracts with such Cities shall be made  
12 available by the Secretary for delivery to non-Indian CAP municipal  
13 and industrial subcontractors other than the Cities pursuant to the  
14 Central Arizona Project M&I water service subcontracts with such  
15 subcontractors, pro rata in proportion to each such subcontractor's  
16 entitlement to Central Arizona Project water for M&I use under such  
17 subcontractor's Central Arizona Project M&I water service subcon-  
18 tract. The manner in which this Subarticle 8(d) is intended to  
19 operate is illustrated by Tables 1 and 2 attached hereto as Exhibit  
20 "C".

21 ARTICLE 9  
22 Payments

23 9. (a) Subject to the provisions of Article 11 hereof,  
24 the City shall pay in advance for CAP OM&R costs estimated to be  
25 incurred by the United States or the Operating Agency in delivering  
26 Colorado River water and Assignment Water to the City pursuant to

1 this Contract. At least 6 months prior to the first delivery of  
2 such water, or as soon thereafter as is practicable, the  
3 Contracting Officer or the Operating Agency shall furnish the City  
4 with an estimate of the City's share of OM&R costs to the end of  
5 the initial year of water delivery and an estimate of such costs  
6 for the following year. Within a reasonable time of the receipt of  
7 said estimates, as determined by the Contracting Officer or the  
8 Operating Agency, but prior to the delivery of water, the City  
9 shall advance to the Contracting Officer or the Operating Agency  
10 its share of such estimated costs to the end of the initial month  
11 of water delivery and without further notice or demand shall on or  
12 before the first day of each succeeding month of the initial year  
13 of water delivery and the following year advance to the Contracting  
14 Officer or the Operating Agency in equal monthly installments the  
15 City's share of such estimated costs. Advances of monthly payments  
16 for each subsequent year shall be made by the City to the Con-  
17 tracting Officer or the Operating Agency on the basis of annual  
18 estimates to be furnished by the Contracting Officer or the  
19 Operating Agency on or before June 1 preceding each said subsequent  
20 year, and the advances of payments for said estimated costs shall  
21 be due and payable in equal monthly payments on or before the first  
22 day of each month of the subsequent year. Differences between  
23 actual OM&R costs and estimated OM&R costs shall be adjusted in the  
24 next succeeding annual estimates; Provided, however, That if in the  
25 opinion of the Contracting Officer or the Operating Agency the  
26 amount of any annual OM&R estimate is likely to be insufficient to

1 cover the above-mentioned costs during such period, the Contracting  
2 Officer or the Operating Agency may increase the annual estimate of  
3 the City's OM&R costs by written notice thereof to the City, and  
4 the City shall forthwith increase its remaining monthly payments in  
5 such year to the Contracting Officer or the Operating Agency by the  
6 amount necessary to cover the estimated insufficiency. All esti-  
7 mates of OM&R costs shall be accompanied by data and computations  
8 relied on by the Contracting Officer or the Operating Agency in  
9 determining the amounts of the estimated OM&R costs and shall be  
10 subject to joint review by the City and the Contracting Officer or  
11 the Operating Agency.

12 (b) Other than as provided for in Exhibit "B"  
13 hereto with respect to Assignment Water the City shall not be re-  
14 quired to pay any water service capital charge(s) with respect to  
15 Colorado River water or Assignment Water to which the City is en-  
16 titled under this Contract.

17 (c) Payment of all OM&R charges becoming due here-  
18 under prior to or on the dates stipulated in Subarticle 9(a) hereof  
19 is a condition precedent to receiving water under this Contract.

20 (d) All payments to be made to the Operating Agency  
21 or the United States under Subarticle 9(a) hereof shall be made by  
22 the City as such payments fall due from revenues legally available  
23 to the City for such payment from the sale of water to its water  
24 users and from any and all other sources which might be legally  
25 available; Provided, That no portion of the general taxing autho-  
26 rity of the City, nor its general funds, nor funds from ad valorem

1 taxes are obligated by the provisions of this Contract, nor shall  
2 such sources be liable for any payments, contributions, or other  
3 costs pursuant to this Contract, or to satisfy any obligation here-  
4 under unless duly and lawfully allocated and budgeted for such  
5 purpose by the City for the applicable budget year; and Provided,  
6 further, That no portion of this Contract shall ever be construed  
7 to create an obligation superior in lien to or on a parity with the  
8 Cities' revenue bonds now or hereafter issued. The City shall levy  
9 and impose such necessary water service charges and rates and use  
10 all the authority and resources available to it to collect all such  
11 necessary water service charges and rates in order that the City  
12 may meet its obligations hereunder and make in full all payments  
13 required under this Contract on or before the date such payments  
14 become due.

15 ARTICLE 10  
16 Loss of Entitlement

17 10. The City shall have no right to delivery of Colorado  
18 River water or Assignment Water under this Contract during any  
19 period in which the City may be in arrears in the payment of any  
20 charges due the United States or the Operating Agency. The Con-  
21 tracting Officer or the Operating Agency may sell to another entity  
22 any water determined to be available under the City's entitlement  
23 for which payment is in arrears; Provided, however, That, except as  
24 provided to the contrary in Exhibit "B" hereto, the City may regain  
25 the right to use any unsold portion of the water determined to be  
26 available under the City's original entitlement upon (i) payment of

1 all delinquent charges plus any difference between the contractual  
2 obligation and the price received in the sale of the water by the  
3 Contracting Officer or Operating Agency and (ii) payment of charges  
4 for the current period.

#### 5 ARTICLE 11

#### 6 Refusal to Accept Delivery

7 11. In the event the City fails or refuses in any year  
8 to accept delivery of the quantity of water available for delivery  
9 to and required to be scheduled by it pursuant to this Contract, or  
10 in the event the City in any year fails to submit a schedule for  
11 delivery as provided in Article 6 hereof, said failure or refusal  
12 shall not relieve the City of its obligation to make the payments  
13 required in this Contract.

#### 14 ARTICLE 12

#### Charges for Delinquent Payments

15 12. (a) The City shall be subject to interest,  
16 administrative, and penalty charges on delinquent installments or  
17 payments. When a payment is not received by the due date, the City  
18 shall pay an interest charge for each day the payment is delinquent  
19 beyond the due date. When a payment becomes 60 days delinquent,  
20 the City shall pay an administrative charge to cover additional  
21 costs of billing and processing the delinquent payment. When a  
22 payment is delinquent 90 days or more, the City shall pay an addi-  
23 tional penalty charge of 6 percent per year for each day the pay-  
24 ment is delinquent beyond the due date. Further, the City shall  
25 pay any fees incurred for debt collection services associated with  
26 a delinquent payment.



1 (b) The interest charge rate shall be the greater  
2 of the rate prescribed quarterly in the Federal Register by the  
3 Department of the Treasury for application to overdue payments, or  
4 the interest rate of 0.5 percent per month prescribed by Section 6  
5 of the Reclamation Project Act of 1939 (Public Law 76-260). The  
6 interest charge rate shall be determined as of the due date and  
7 remain fixed for the duration of the delinquent period.

8 (c) When a partial payment on a delinquent account  
9 is received, the amount received shall be applied, first to the  
10 penalty, second to the administrative charges, third to the accrued  
11 interest, and finally to the overdue payment.

12 ARTICLE 13  
13 Secretarial Control of Return Flow

14 13. (a) The Secretary reserves the right to capture all  
15 return flow flowing from the exterior boundaries of CAWCD's service  
16 area as a source of supply and for distribution to and use of the  
17 Central Arizona Project to the fullest extent practicable. The  
18 Secretary also reserves the right to capture for CAP use return  
19 flow which originates or results from water contracted for from the  
20 Central Arizona Project within the boundaries of CAWCD's service  
21 area if, in his judgment, such return flow is not being put to a  
22 beneficial use. The City may recapture and reuse or sell its re-  
23 turn flow; Provided, however, That such return flow may not be sold  
24 for use outside Maricopa, Pinal, and Pima Counties; and Provided,  
25 further, That this does not prohibit effluent exchanges with Indian  
26 tribes pursuant to Article 6.2 of the City's Central Arizona

1 Project M&I water service subcontract (Contract No. 5-07-30-  
2 W0070). The City shall, at least 60 days in advance of any  
3 proposed sale of such water, furnish the following information in  
4 writing to the Contracting Officer and CAWCD:

5 (i) The name and address of the prospective  
6 buyer.

7 (ii) The location and proposed use of the  
8 return flow.

9 (iii) The price to be charged for the return  
10 flow.

11 (b) The price charged for the return flow may cover  
12 the cost incurred by the City for Colorado River water and Assign-  
13 ment Water plus the cost required to make the return flow usable.  
14 If the price received for the return flow is greater than the costs  
15 incurred by the City, as described above, the excess amount shall  
16 be forthwith paid by the City to the CAWCD for application against  
17 CAWCD's repayment obligation to the United States. Costs required  
18 to make return flow usable shall include but not be limited to  
19 capital costs and OM&R costs including transportation, treatment,  
20 and distribution, and the portion thereof which may be retained by  
21 the City shall be subject to the advance approval of CAWCD and the  
22 Contracting Officer.

23 (c) Any return flow captured by the United States  
24 and determined by the Contracting Officer and CAWCD to be suitable  
25 and available for use by the City may be delivered by the United  
26 States or Operating Agency to the City as a part of the water

1 supply for which the City has subcontracted pursuant to Contract  
2 No. 5-07-30-W0070, and such water shall be accounted and paid for  
3 pursuant to the provisions thereof.

4 (d) All capture, recapture, use, reuse, and sale of  
5 return flow under this article shall be in accord with Arizona  
6 water law unless such law is inconsistent with the Congressional  
7 directives applicable to the Central Arizona Project.

8 ARTICLE 14  
9 Water and Air Pollution Control

10 14. The City, in carrying out this Contract, shall  
11 comply with all applicable water and air pollution laws and regu-  
12 lations of the United States and the State of Arizona and shall  
13 obtain all required permits or licenses from the appropriate  
14 Federal, State, or local authorities.

15 ARTICLE 15  
16 Quality of Water

17 15. The operation and maintenance of project facilities  
18 shall be performed in such manner as is practicable to maintain the  
19 quality of water made available through such facilities at the  
20 highest level reasonably attainable as determined by the Contract-  
21 ing Officer. Neither the United States nor the Operating Agency  
22 warrants the quality of water and is under no obligation to con-  
23 struct or furnish water treatment facilities to maintain or better  
24 the quality of water. The City waives its right to make a claim  
25 against the United States, the Operating Agency, or any subcon-  
26 tractor because of changes in water quality caused by the  
... .

1 commingling of water to be delivered under this Contract with other  
2 water.

3 ARTICLE 16  
4 Equal Opportunity

5 16. During the performance of this Contract, the City  
6 agrees as follows:

7 (a) The City will not discriminate against any  
8 employee or applicant for employment because of race, color,  
9 religion, sex, or national origin. The City will take affirmative  
10 action to ensure that applicants are employed, and that employees  
11 are treated during employment, without regard to their race, color,  
12 religion, sex, or national origin. Such action shall include, but  
13 not be limited to the following: employment, upgrading, demotion,  
14 or transfer; recruitment or recruitment advertising; layoff or  
15 termination; rates of pay or other forms of compensation; and  
16 selection for training, including apprenticeship. The City agrees  
17 to post in conspicuous places, available to employees and appli-  
18 cants for employment, notices to be provided by the Contracting  
19 Officer setting forth the provisions of this nondiscrimination  
20 clause.

21 (b) The City will, in all solicitations or  
22 advertisements for employees placed by or on behalf of the City,  
23 state that all qualified applicants will receive consideration for  
24 employment without discrimination because of race, color, religion,  
25 sex, or national origin.

26 . . .

1 (c) The City will send to each labor union or  
2 representative of workers with which it has a collective bargaining  
3 agreement or other contract or understanding, a notice, to be pro-  
4 vided by the Contracting Officer, advising said labor union or  
5 workers' representative of the City's commitments under Section 202  
6 of Executive Order No. 11246 of September 24, 1965, as amended, and  
7 shall post copies of the notice in conspicuous places available to  
8 employees and applicants for employment.

9 (d) The City will comply with all provisions of  
10 Executive Order No. 11246 of September 24, 1965, as amended, and of  
11 the rules, regulations, and relevant orders of the Secretary of  
12 Labor.

13 (e) The City will furnish all information and  
14 reports required by said amended Executive Order and by the rules,  
15 regulations, and orders of the Secretary of Labor, or pursuant  
16 thereto, and will permit access to its books, records, and accounts  
17 by the Contracting Officer and the Secretary of Labor for purposes  
18 of investigation to ascertain compliance with such rules, regula-  
19 tions, and orders.

20 (f) In the event of the City's noncompliance with  
21 the nondiscrimination clauses of this Contract or with any of such  
22 rules, regulations, or orders, this Contract may be canceled,  
23 terminated, or suspended, in whole or in part, and the City may be  
24 declared ineligible for further Government contracts in accordance  
25 with procedures authorized in said amended Executive Order, and  
26 such other sanctions may be imposed and remedies invoked as pro-

1 vided in said amended Executive Order, or by rule, regulation, or  
2 order of the Secretary of Labor, or as otherwise provided by law.

3 (g) The City will include the provisions of  
4 Subarticles 16(a) through 16(g) in every subcontract or purchase  
5 order unless exempted by rules, regulations, or orders of the  
6 Secretary of Labor issued pursuant to Section 204 of said amended  
7 Executive Order, so that such provisions will be binding upon each  
8 subcontractor or vendor. The City will take such action with  
9 respect to any subcontract or purchase order as may be directed by  
10 the Secretary of Labor as a means of enforcing such provisions,  
11 including sanctions for noncompliance; Provided, however, That in  
12 the event the City becomes involved in, or is threatened with,  
13 litigation with a subcontractor or vendor as a result of such  
14 direction, the City may request the United States to enter into  
15 such litigation to protect the interests of the United States.

16 **ARTICLE 17**  
17 **Compliance with Civil Rights Laws and Regulations**

18 17. (a) The City shall comply with Title VI of the  
19 Civil Rights Act of 1964 (42 U.S.C. 2000d), Section 504 of the  
20 Rehabilitation Act of 1975 (Public Law 93-112, as amended), the Age  
21 Discrimination Act of 1975 (42 U.S.C. 6101, et seq.) and any other  
22 applicable civil rights laws, as well as with their respective  
23 implementing regulations and guidelines imposed by the U.S. Depart-  
24 ment of the Interior and/or Bureau of Reclamation.

25 (b) These statutes require that no person in the  
26 United States shall, on the grounds of race, color, national

1 origin, handicap, or age, be excluded from participation in, be  
2 denied the benefits of, or be otherwise subjected to discrimination  
3 under any program or activity receiving financial assistance from  
4 the Bureau of Reclamation. By executing this Contract, the City  
5 agrees to immediately take any measures necessary to implement this  
6 obligation, including permitting officials of the United States to  
7 inspect premises, programs, and documents.

8 (c) The City makes this agreement in consideration  
9 of and for the purpose of obtaining any and all Federal grants,  
10 loans, contracts, property discounts or other Federal financial  
11 assistance extended after the date hereof to the City by the Bureau  
12 of Reclamation, including installment payments after such date on  
13 account of arrangements for Federal financial assistance which were  
14 approved before such date. The City recognizes and agrees that  
15 such Federal assistance will be extended in reliance on the repre-  
16 sentations and agreements made in this article, and that the United  
17 States reserves the right to seek judicial enforcement thereof.

18 ARTICLE 18  
19 Notices

20 18. Any notice, demand, or request authorized or re-  
21 quired by this Contract shall be deemed to have been given, on  
22 behalf of the City and CAWCD, when mailed, postage prepaid, or  
23 delivered to the Regional Director, Lower Colorado Region, Bureau  
24 of Reclamation, P.O. Box 427, Boulder City, Nevada 89005, and on  
25 behalf of the United States and CAWCD, when mailed, postage pre-  
26 paid, or delivered to the Manager of the City, 200 East Common-

1 wealth, Chandler, Arizona 85225, on behalf of the City and the  
2 United States, when mailed, postage prepaid, or delivered to the  
3 General Manager, Central Arizona Water Conservation District, 23636  
4 North Seventh Street, Phoenix, Arizona 85024. The designation of  
5 the addressee or the address may be changed by notice given in the  
6 same manner as provided in this article for other notices.

7 ARTICLE 19

8 Assignment Limited--Successors and Assigns Obligated

9 19. The provisions of this Contract shall apply to and  
10 bind the successors and assigns of the parties hereto, but no  
11 assignment or transfer of this Contract or any right or interest  
12 therein shall be valid unless and until approved in writing by the  
13 Contracting Officer and CAWCD.

14 ARTICLE 20

Officials Not to Benefit

15 20. No Member of or Delegate to Congress, Resident  
16 Commissioner, or official of the City shall benefit from this Con-  
17 tract other than as a water user or landowner in the same manner as  
18 other water users or landowners.

19 ARTICLE 21

20 Transfer of OM&R Responsibility to CAWCD;  
21 Project Repayment

22 21. (a) At or prior to the date that the United States  
23 transfers OM&R responsibility for project works associated with  
24 delivery of water to the Cities to CAWCD as the Operating Agency,  
25 the United States shall secure the agreement of CAWCD to perform  
26 the United States' obligations under this Contract to deliver water



1 under this Contract through the transferred works.

2 (b) For the purpose of determining the allocation  
3 and repayment of costs of the CAP as provided in Article 9.3 of the  
4 Repayment Contract and any amendment or revision thereof, the costs  
5 associated with the delivery of water to the City under this Con-  
6 tract shall be nonreimbursable, and such costs shall be excluded  
7 from CAWCD's repayment obligation.

8 ARTICLE 22  
9 Repayment Contract Controlling

10 22. Pursuant to the Repayment Contract, the United  
11 States has agreed to construct and, in the absence of an approved  
12 Operating Agency, to operate and maintain the works of the Central  
13 Arizona Project and to deliver Central Arizona Project water to the  
14 various subcontractors within CAWCD's service area; and CAWCD has  
15 obligated itself for the payment of various costs, expenses, and  
16 other amounts allocated to CAWCD pursuant to Article 9 of the Re-  
17 payment Contract. The City expressly approves and agrees to all  
18 the terms presently set out in the Repayment Contract, or as such  
19 terms may be hereafter amended, and agrees to be bound by the  
20 actions to be taken and the determinations to be made under that  
21 Repayment Contract, except as otherwise provided herein.

22 . . .

23 . . .

24 . . .

25 . . .

26 . . .

1 IN WITNESS WHEREOF, the parties hereto have executed this  
2 Contract No. 9-07-30-W0235 the day and year first above-  
3 written.

4 THE UNITED STATES OF AMERICA

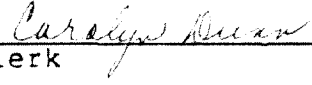
5  
6 By 

7  
8 CENTRAL ARIZONA WATER  
9 CONSERVATION DISTRICT


10 Attest: \_\_\_\_\_  
11 Secretary

12 By \_\_\_\_\_  
13 President

14 CITY OF CHANDLER, ARIZONA

15 Attest:   
16 City Clerk

17 By   
18 Mayor

19 Approved  
20 as to Form:   
21 City Attorney

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Exhibit "A"

CAP Master Repayment Contract

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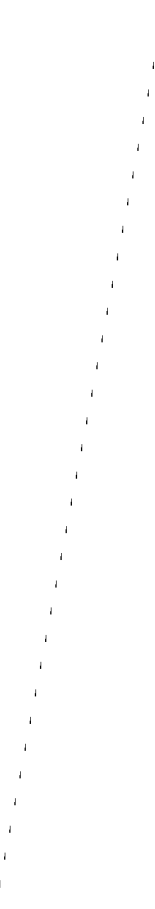
Exhibit "B"

Assignment among RWCD, CAWCD and The United States  
(See Exhibit "12.3." to Agreement)

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EXHIBIT "C"

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EXHIBIT "3.h.2"

River Water Exchange Contract  
City of Glendale, Arizona

Exhibit "3.h.2"  
RIVER WATER EXCHANGE CONTRACT  
City of Glendale, Arizona

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Exhibit "3.h.2"  
RIVER WATER EXCHANGE CONTRACT  
City of Glendale, Arizona

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Exhibits

Exhibit "A"	CAP Master Repayment Contract
Exhibit "B"	Assignment among RWCD, CAWCD and the United States
Exhibit "C"	SRPMIC Agreement Water Calculations (Tables 1 and 2)

1  
2 UNITED STATES  
3 DEPARTMENT OF THE INTERIOR  
4 BUREAU OF RECLAMATION

5 CONTRACT AMONG THE UNITED STATES,  
6 THE CENTRAL ARIZONA WATER CONSERVATION DISTRICT,  
7 AND THE CITY OF GLENDALE, ARIZONA,  
8 PROVIDING FOR WATER SERVICE

9 ARTICLE 1  
10 Preamble

11 1. THIS CONTRACT, made as of the 12th day of February,  
12 1988, in pursuance of the Salt River Pima-Maricopa Indian Community  
13 Water Rights Settlement Act of 1988, P.L. 100-512, 102 Stat. 2549,  
14 and the Act of June 17, 1902 (32 Stat. 388), and acts amendatory  
15 thereof or supplementary thereto, including but not limited to the  
16 Boulder Canyon Project Act of December 21, 1928 (45 Stat. 1057),  
17 the Colorado River Basin Project Act of September 30, 1968 (82  
18 Stat. 885), as amended, hereinafter referred to collectively as the  
19 "Federal Reclamation Laws," and the various authorities and respon-  
20 sibilities of the Secretary of the Interior in relation to Indians  
21 and Indian Tribes, as contained in Title 25 U.S.C. and 43 U.S.C. §  
22 1457, among THE UNITED STATES OF AMERICA, acting through the  
23 Secretary of the Interior, the CENTRAL ARIZONA WATER CONSERVATION  
24 DISTRICT, hereinafter referred to as "CAWCD," a multi-county water  
25 conservation district organized under the laws of Arizona, with its  
26 principal place of business in Phoenix, Arizona, and the CITY OF  
GLENDALE, Arizona, hereinafter referred to as the "City," with its  
principal place of business at 5850 West Glendale Avenue, Glendale,  
Arizona;

1 WITNESSETH, THAT:

2 ARTICLE 2  
3 Explanatory Recitals

4 2. WHEREAS, the Colorado River Basin Project Act pro-  
5 vides, among other things, that for the purposes of furnishing  
6 irrigation and municipal and industrial water supplies to water  
7 deficient areas of Arizona and western New Mexico through direct  
8 diversion or exchange of water, control of floods, conservation and  
9 development of fish and wildlife resources, enhancement of recrea-  
10 tion opportunities, and for other purposes, the Secretary of the  
11 Interior shall construct, operate, and maintain the Central Arizona  
12 Project; and

13 WHEREAS, pursuant to the provisions of Arizona Revised  
14 Statutes §§ 48-3701, et seq., CAWCD has been organized with the  
15 power to enter into a contract or contracts with the Secretary of  
16 the Interior to accomplish the purposes of Arizona Revised Sta-  
17 tutes, §§ 48-3701, et seq.; and

18 WHEREAS, pursuant to Section 304(b)(1) of the Colorado  
19 River Basin Project Act, the Secretary of the Interior has deter-  
20 mined that it is necessary to effect repayment of the cost of con-  
21 structing the Central Arizona Project pursuant to a master contract  
22 and that the United States, together with CAWCD, shall be a party  
23 to contracts that are in conformity with and subsidiary to the  
24 master contract; and

25 WHEREAS, the United States and CAWCD entered into Con-  
26 tract No. 14-06-W-245 dated December 15, 1972, which was amended on

1 December 1, 1988, hereinafter referred to as the "Repayment Con-  
2 tract," a copy of which is attached hereto as Exhibit "A" and by  
3 this reference made a part hereof, whereby CAWCD agrees to repay to  
4 the United States the reimbursable costs of the Central Arizona  
5 Project allocated to CAWCD; and

6 WHEREAS, the City has entered into a water service sub-  
7 contract with the United States and CAWCD for municipal and indus-  
8 trial water service from water supplies available from the Central  
9 Arizona Project, Contract No. 5-07-30-W0062; and

10 WHEREAS, the United States, the State of Arizona, the  
11 Salt River Pima-Maricopa Indian Community, the Salt River Valley  
12 Water Users' Association, the Salt River Project Agricultural  
13 Improvement and Power District, the Roosevelt Water Conservation  
14 District, the Roosevelt Irrigation District, the Cities of  
15 Phoenix, Scottsdale, Glendale, Mesa, Tempe, and Chandler and the  
16 Town of Gilbert, Arizona, and CAWCD have agreed to permanently  
17 settle the water rights of the Salt River Pima-Maricopa Indian  
18 Community and its members, to finally resolve pending litigation on  
19 water rights and damage claims, and to seek funding for implementa-  
20 tion of the settlement; and

21 WHEREAS, the United States, acting through the Secretary  
22 of the Interior, has both a trust and fiduciary responsibility to  
23 make the Salt River Pima-Maricopa Indian reservation a permanent  
24 Tribal homeland for the Salt River Pima-Maricopa Indian Community;  
25 and

26 . . .

1           WHEREAS, as part of the water rights settlement with the  
2 Salt River Pima-Maricopa Indian Community, the United States is  
3 required to contract with the City for the delivery through Central  
4 Arizona Project facilities of not to exceed three thousand (3,000)  
5 acre-feet per year of Colorado River water which was not included  
6 in the determination of water supplies available to the Central  
7 Arizona Project, plus certain additional amounts of Central  
8 Arizona Project water to be made available each year by the  
9 Roosevelt Water Conservation District or the Secretary of the  
10 Interior from Central Arizona Project water supplies otherwise  
11 available for agricultural use;

12           NOW, THEREFORE, in consideration of the mutual covenants  
13 herein contained, the parties hereto agree as follows:

14                   ARTICLE 3  
15                   Definitions

16           3.   For purposes of this Contract:

17                   (a) "Agricultural water" shall mean water made  
18 available from the Central Arizona Project for the commercial pro-  
19 duction of agricultural crops or livestock, including domestic use  
20 incidental thereto, on tracts of land operated in units of more  
21 than five acres.

22                   (b) "CAWCD's service area" shall mean the area now  
23 included within the Central Arizona Water Conservation District,  
24 consisting of Maricopa, Pinal, and Pima Counties, Arizona, and such  
25 other counties as may hereafter become part of the District,

26           . . .

1 exclusive of any Indian reservation land lying wholly or partly  
2 within said Counties.

3 (c) "Central Arizona Project" or "CAP" or "pro-  
4 ject" shall mean the project and works authorized by Section 301(a)  
5 of the Colorado River Basin Project Act and constructed by the  
6 United States pursuant to the provisions of said Act.

7 (d) "Cities" shall mean the City of Chandler, the  
8 City of Glendale, the City of Scottsdale, the City of Tempe, the  
9 City of Mesa, the City of Phoenix, and the Town of Gilbert.

10 (e) "Colorado River water" shall mean that  
11 Colorado River mainstream water to be delivered to the City under  
12 this Contract which has a Colorado River priority pre-dating  
13 September 30, 1968.

14 (f) "Contracting Officer" shall mean the Secretary  
15 or his authorized designee acting on his behalf.

16 (g) "Distribution works" shall mean those facil-  
17 ities constructed or used for the purpose of distributing water to  
18 or within the City's service area after said water has been trans-  
19 ported through the water supply system to the City's project turn-  
20 out(s).

21 (h) "Ground water recharge" shall mean the recharge  
22 of water pursuant to title 45, chapter 2, article 13, Arizona  
23 Revised Statutes or the underground storage and recovery of water  
24 pursuant to title 45, chapter 3, Arizona Revised Statutes, or as  
25 said statutes may be hereafter amended or revised.

26 . . .

1 (i) "Miscellaneous water" shall mean water made  
2 available from the Central Arizona Project, or by exchange for such  
3 water, for recreational and fish and wildlife purposes at other  
4 than project facilities, and which has a lesser priority of use  
5 than agricultural water.

6 (j) "Municipal and industrial water," hereinafter  
7 sometimes referred to as "M&I water," shall mean water made avail-  
8 able from the Central Arizona Project other than agricultural water  
9 and miscellaneous water.

10 (k) "Notice of completion" shall mean the notice  
11 which the Contracting Officer issues to CAWCD to announce the sub-  
12 stantial completion of the water supply system, or of those fea-  
13 tures of the project which include or comprise the water supply  
14 system, or of the entire project if constructed concurrently,  
15 thereby initiating payments therefor allocated to CAWCD.

16 (l) "OM&R" shall mean the care, operation, mainte-  
17 nance, and replacement of project works.

18 (m) "Operating Agency" shall mean the entity or  
19 entities authorized to assume OM&R responsibility of transferred  
20 works and approved for that purpose by the Contracting Officer.

21 (n) "Assignment Water" shall mean that water to be  
22 delivered to the City under this Contract which is made available  
23 to the City by the Roosevelt Water Conservation District ("RWCD")  
24 or the Secretary of the Interior pursuant to the Assignment, dated  
25 as of February 12, 1988 among the United States, CAWCD, RWCD,  
26 . . .

1 and the Cities. A copy of the Assignment is attached hereto as  
2 Exhibit "B" and by this reference made a part hereof.

3 (o) "Project works" shall mean the principal works  
4 described in Section 301(a) of the Colorado River Basin Project  
5 Act, and appurtenances thereto, or as modified pursuant to the  
6 Repayment Contract, together with lands, interests in lands, and  
7 rights-of-way for such works and appurtenances.

8 (p) "Return flow" shall mean all agricultural, M&I,  
9 and miscellaneous waste water, seepage, and ground water which  
10 originates or results from Colorado River water or Assignment Water  
11 as defined herein, but shall not include any water delivered  
12 through the project works for ground water recharge purposes.

13 (q) "Secretary" shall mean the Secretary of the  
14 Interior of the United States or his duly authorized  
15 representative.

16 (r) "Settlement Agreement" shall mean the Agreement  
17 dated as of February 12, 1988, among the United States of America,  
18 the State of Arizona, the Salt River Pima-Maricopa Indian  
19 Community, the Salt River Project Agricultural Improvement and  
20 Power District, the Salt River Valley Water Users' Association,  
21 RWCD, the Roosevelt Irrigation District, the Cities, and CAWCD.

22 (s) "Subcontractor" shall mean any irrigation dis-  
23 trict, municipality, individual, or any other entity which enters  
24 into a water service subcontract with the United States and CAWCD  
25 in furtherance of the provisions of the Colorado River Basin  
26 Project Act.



1 (t) "Time of shortage" shall mean a calendar year  
2 for which the Secretary determines that a shortage exists pursuant  
3 to Section 301(b) of the Colorado River Basin Project Act, such  
4 that there is not sufficient water available for delivery from the  
5 Central Arizona Project in that year (after reduction in considera-  
6 tion of anticipated losses due to evaporation and seepage estimated  
7 to occur during transportation of such water through the water  
8 supply system and exclusive of "Colorado River water" as defined  
9 herein) to meet fully the entitlements of Indian contractors and  
10 non-Indian municipal and industrial subcontractors of Central  
11 Arizona Project water supplies.

12 (u) "Transferred works" shall mean such features of  
13 the project or such facilities of the water supply system as to  
14 which OM&R responsibility is transferred from the United States to  
15 the Operating Agency.

16 (v) "Water supply system" shall mean the Navajo  
17 Project, Havasu Pumping Plant, the Granite Reef, Salt-Gila, and  
18 Tucson aqueducts and associated pumping plants and appurtenant  
19 works, but not including Tucson Terminal Storage or any  
20 distribution works.

21 (w) "Year" shall mean the period between January 1  
22 through the next succeeding December 31.

23 ARTICLE 4  
24 Term

25 4. This Contract shall become effective upon its execu-  
26 tion by the parties hereto and its term shall be perpetual.

ARTICLE 5  
Delivery of Water

5. (a) The United States shall obtain rights to 22,000 acre-feet of annual consumptive use of mainstream Colorado River water in Arizona with a contractual priority pre-dating September 30, 1968, and which was not included in the determination of the water supplies available to the Central Arizona Project. The Secretary shall make such Colorado River water available for delivery as provided herein.

(b) Except as provided in Article 8 hereof, commencing with the year in which the Secretary issues notice of completion or the enforceability date of the Settlement Agreement, whichever is later, and for each year thereafter, the City shall be entitled to Colorado River water and Assignment Water in amounts not exceeding the following:

(i) Colorado River water -- 3,000 acre-feet;  
and

(ii) Assignment Water made available to the City by RWCD pursuant to Paragraph 2 of the Assignment attached hereto as Exhibit "B" -- 682 acre-feet; or

(iii) Assignment Water made available to the City by the Secretary pursuant to Paragraph 3 of the Assignment attached hereto as Exhibit "B" -- 409 acre-feet.

(c) The City's annual entitlement to Colorado River water under Subarticle 5(b)(i) hereof shall be deemed to be met if initially made available for delivery at CAWCD's project delivery

1 point on the Colorado River, and shall be subject to reduction on  
2 account of losses by reason of evaporation and seepage occurring  
3 during the transportation of such water through the water supply  
4 system to the City's project delivery point. Said losses occur-  
5 ring on the City's Colorado River water supplies shall be deter-  
6 mined by the Contracting Officer or the Operating Agency, but shall  
7 not exceed the City's pro rata share of losses as compared to  
8 losses due to evaporation and seepage occurring during transporta-  
9 tion through the water supply system of all water supplies deli-  
10 vered during a year.

11 (d) The City's entitlement to Assignment Water  
12 under Subparagraphs 5(b)(ii) and 5(b)(iii) hereof, and its rights  
13 and obligations with respect to such Assignment Water, shall be  
14 subject to the terms and conditions of the Assignment attached  
15 hereto as Exhibit "B".

16 (e) The City's entitlement to Colorado River water  
17 and Assignment Water under this Contract shall be in addition to  
18 the City's entitlement to Central Arizona Project water for muni-  
19 cipal and industrial use under the City's Central Arizona Project  
20 M&I water service subcontract (Contract No. 5-07-30-W0062).

21 (f) During such periods as it operates and main-  
22 tains the Central Arizona Project, the United States shall deliver  
23 Colorado River water and Assignment Water to which the City is  
24 entitled under this Contract through the water supply system.  
25 Subject to the provisions of Subarticles 5(c) and 5(d) hereof, the  
26 United States shall use all reasonable diligence to make available

1 to the City the quantity of Colorado River water and Assignment  
2 Water specified in the schedule submitted by the City in accordance  
3 with Article 6 hereof. After transfer of OM&R responsibility to  
4 the Operating Agency, the United States shall make deliveries of  
5 Colorado River water and Assignment Water to the Operating Agency  
6 which shall make subsequent delivery of such water to the City as  
7 provided herein.

8 (g) The obligation of the United States and the  
9 Operating Agency to deliver Colorado River water and Assignment  
10 Water to the City under this Contract is subject to:

11 (i) The availability of such water for use in  
12 Arizona under the provisions of the Colorado River Compact, exe-  
13 cuted November 24, 1922; the Boulder Canyon Project Act, 45 Stat.  
14 1057, dated December 21, 1928; the Colorado River Basin Project  
15 Act, 82 Stat. 885, dated September 30, 1968, the contract between  
16 the United States and the State of Arizona dated February 9, 1944,  
17 the Opinion of the Supreme Court of the United States in the case  
18 of Arizona v. California et al., rendered June 3, 1963, 373 U.S.  
19 546, and the Decree of that court in said case, entered March 9,  
20 1964, 376 U.S. 340, as amended on February 28, 1966, at 383 U.S.  
21 268, and supplemented on January 9, 1979, at 439 U.S. 419, or as  
22 hereafter modified;

23 (ii) Executive A, Seventy-Eighth Congress,  
24 Second Session, a treaty between the United States of America and  
25 the United Mexican States, signed at Washington on February 3,  
26 1944, relating to the utilization of the waters of the Colorado and

1 Tijuana Rivers and of the Rio Grande from Fort Quitman, Texas, to  
2 the Gulf of Mexico, and Executive H, Seventy-eighth Congress,  
3 Second Session, a protocol signed at Washington on November 14,  
4 1944, supplementary to the Treaty, all hereinafter referred to as  
5 the Mexican Water Treaty;

6 (iii) The express understanding and agreement by  
7 the City that this Contract is subject to the condition that Hoover  
8 Dam and Lake Mead shall be used: first, for river regulation,  
9 improvement of navigation, and flood control; second, for irriga-  
10 tion and domestic uses and satisfaction of present perfected rights  
11 in pursuance of Article VIII of the Colorado River Compact approved  
12 by Section 13(a) of the Boulder Canyon Project Act; and third, for  
13 power; and furthermore, that this Contract is made upon the express  
14 condition and with the express covenant that all rights hereunder  
15 shall be subject to and controlled by the Colorado River Compact  
16 and that the United States and City shall observe and be subject to  
17 and controlled by said Colorado River Compact and Boulder Canyon  
18 Project Act in the construction, management, and operation of  
19 Hoover Dam, Lake Mead, canals and other works, and the storage,  
20 diversion, delivery, and use of water to be delivered to City here-  
21 under; and

22 (iv) The right of the United States or the  
23 Operating Agency temporarily to discontinue or reduce the amount of  
24 water to be delivered hereunder whenever such discontinuance or  
25 reduction is made necessary for purposes of investigations, in-  
26 spections, replacements, maintenance, or repairs to any works what-

1 soever affecting, utilized or, in the opinion of the Secretary or  
2 the Operating Agency, necessary for delivery of water hereunder, it  
3 being understood that so far as feasible the United States or the  
4 Operating Agency will (i) do so during periods of low water demands  
5 and (ii) give reasonable notice in advance of such temporary dis-  
6 continuance or reduction.

7 (h) Subject to the terms and conditions herein, the  
8 United States and the Operating Agency shall be obligated to deli-  
9 ver Colorado River water and Assignment Water to the City without  
10 regard as to whether or not the Salt River Pima-Maricopa Indian  
11 Community exercises its right to use any or all of the exchange  
12 water referred to in Paragraph 12 of the Settlement Agreement.

13 (i) Delivery and use of Colorado River Water and  
14 Assignment Water under this Contract is further conditioned on the  
15 following, and the City hereby agrees that:

16 (i) All uses of Colorado River water,  
17 Assignment Water and return flow shall be consistent with Arizona  
18 water law unless such law is inconsistent with the Congressional  
19 directives applicable to the Central Arizona Project.

20 (ii) The system or systems through which  
21 Colorado River water and Assignment Water for municipal and in-  
22 dustrial (including ground water recharge) purposes is conveyed  
23 after delivery to the City shall consist of pipelines, canals,  
24 distribution systems, or other conduits provided and maintained  
25 with linings adequate in the Contracting Officer's judgment to  
26 prevent excessive conveyance losses.

1 (iii) The City shall not pump, or within its  
2 legal authority, permit others to pump ground water from within the  
3 exterior boundaries of the City's service area, which has been  
4 delineated on a map filed with the Contractor and approved by the  
5 Contractor and the Contracting Officer, for use outside of said  
6 service area unless such pumping is permitted under Title 45,  
7 Chapter 2, Arizona Revised Statutes, as it may be amended from time  
8 to time, and the Contracting Officer, CAWCD, and the City shall  
9 agree, or shall have previously agreed, that a surplus of ground  
10 water exists and drainage is or was required; Provided, however,  
11 That such pumping may be approved by the Contracting Officer and  
12 CAWCD, and approval shall not be unreasonably withheld, if such  
13 pumping is in accord with the Colorado River Basin Project Act and  
14 upon submittal by the City of a written certification from the  
15 Arizona Department of Water Resources or its successor agency that  
16 the pumping and transportation of ground water is in accord with  
17 Title 45, Chapter 2, Arizona Revised Statutes, as it may be amended  
18 from time to time.

19 (iv) The City shall not sell or otherwise dis-  
20 pose of or permit the sale or other disposition of Colorado River  
21 water and Assignment Water for use outside of Maricopa, Pinal, and  
22 Pima Counties; Provided, however, That this does not prohibit ex-  
23 changes of Colorado River water and Assignment Water covered by  
24 separate agreements; and Provided, further, That this does not  
25 prohibit effluent exchanges with Indian tribes pursuant to Article  
26 . . .

1 6.2 of the City's Central Arizona Project M&I water service  
2 subcontract (Contract No. 5-07-30-W0062).

3 (j) (i) Colorado River water and Assignment Water  
4 scheduled for delivery in any year under this contract may be used  
5 by the City or resold or exchanged by the City pursuant to appro-  
6 priate agreements approved by the Contracting Officer and CAWCD.  
7 If said water is resold or exchanged by the Contractor for an  
8 amount in excess of that which the City is obligated to pay under  
9 this Contract, the excess amount shall be paid forthwith by the  
10 City to CAWCD for application against the CAWCD's repayment obli-  
11 gation to the United States; Provided, however, That the  
12 Contractor shall be entitled to recover actual costs of transpor-  
13 tation, treatment, and distribution, including but not limited to  
14 OM&R costs.

15 (ii) Colorado River water and Assignment Water  
16 scheduled for delivery in any year under this Contract that cannot  
17 be used, resold, or exchanged by the City may be made available by  
18 the Contracting Officer or the Operating Agency to other users. If  
19 such water is sold to or exchanged with other users, the City shall  
20 be relieved of its payments hereunder only to the extent of the  
21 amount paid to the Contracting Officer and the Operating Agency by  
22 such other users, but not to exceed the amount the City is obli-  
23 gated to pay under this Contract for said water.

24 (iii) In the event the City, the Contracting  
25 Officer, or the Operating Agency is unable to sell any portion of  
26 the Colorado River water or Assignment Water scheduled for delivery



1 by the City but not required by the City in any year, the City  
2 shall be relieved of the pumping energy portion of the OM&R charges  
3 associated with the undelivered water as determined by the  
4 Contracting Officer or the Operating Agency.

5 (k) The City shall have the right to use Colorado  
6 River water and Assignment Water received under this Contract for  
7 any purpose consistent with Arizona law, including ground water  
8 recharge.

9 ARTICLE 6  
10 Procedure for Ordering Water

11 6. At least six months prior to the delivery of Color-  
12 ado River water and Assignment Water to the City under this Con-  
13 tract, the Contracting Officer or the Operating Agency shall issue  
14 a written notice of availability of such water to the City. The  
15 City will, in accordance with the procedures hereinafter set out,  
16 submit written schedules to the Contracting Officer and the  
17 Operating Agency showing the quantities of (i) Colorado River water  
18 and (ii) Assignment Water requested for delivery. The City shall  
19 submit a schedule which requests the delivery of all Assignment  
20 Water available to it. If the first notice of availability of  
21 water is issued to the City by the Contracting Officer or the  
22 Operating Agency prior to June 1 of any year, the first schedule  
23 for the balance of said year shall be submitted to the Contracting  
24 Officer and the Operating Agency within 30 days after the City's  
25 receipt of such notice. If such notice is issued after June 1 of  
26 any year, the first schedule shall be submitted to the Contracting

1 Officer and the Operating Agency within 30 days after the City's  
2 receipt of such notice and shall cover the balance of such year and  
3 the next succeeding year. Thereafter, the amounts, times, and  
4 rates of delivery of water to the City during any year shall be in  
5 accordance with a water delivery schedule for that year, such sche-  
6 dule to be determined in the following manner:

7 (a) On or before June 1 of each year, the Contract-  
8 ing Officer shall announce (i) the amount of Colorado River water  
9 and (ii) the amount of Assignment Water available for delivery  
10 during the following year in a written notice to the Operating  
11 Agency and the City.

12 (b) On or before October 1 of each year, the City  
13 shall submit in writing to the Operating Agency and the Contracting  
14 Officer a water delivery schedule indicating the amounts of (i)  
15 Colorado River water and (ii) Assignment Water desired by the City  
16 during each month of the following year along with a preliminary  
17 schedule of water desired for the succeeding 2 years. The City  
18 shall schedule for delivery each year all Assignment Water  
19 available to it for delivery during that year.

20 (c) Upon receipt of such schedule, the Contracting  
21 Officer and the Operating Agency shall review it and, after con-  
22 sultation with the City, shall make only such modifications to the  
23 schedule as are necessary to ensure that the amounts, times, and  
24 rates of delivery to the City are consistent with the delivery  
25 capability of the project, considering, among other things, the  
26 availability of water and the delivery schedules of all subcon-

1 tractors of Central Arizona Project water service; Provided, That  
2 this provision shall not be construed to reduce annual deliveries  
3 to the City.

4 (d) On or before November 15 of each year, the  
5 Contracting Officer or the Operating Agency shall determine and  
6 furnish to the City the water delivery schedule for the next suc-  
7 ceeding year which shall show the amounts of (i) Colorado River  
8 water and (ii) Assignment Water to be delivered to the City during  
9 each month of that year.

10 (e) The monthly water delivery schedules may be  
11 amended by the Contracting Officer or the Operating Agency upon the  
12 City's written request. Proposed amendments shall be submitted by  
13 the City within a reasonable time before the desired change is to  
14 become effective, and shall be subject to review and modification  
15 by the Contracting Officer or the Operating Agency in like manner  
16 as the schedule itself.

17 (f) In no event shall the Contracting Officer or  
18 the Operating Agency be required to deliver in any one month (i) an  
19 amount of Colorado River water greater than eleven percent (11%) of  
20 the City's maximum annual entitlement to Colorado River water under  
21 Subarticle 5(b)(i) of this Contract or (ii) an amount of Assignment  
22 Water greater than eleven percent (11%) of the City's maximum  
23 annual entitlement to Assignment Water under Subarticle 5(b)(ii)  
24 or 5(b)(iii) of this Contract; Provided, however, That the Con-  
25 tracting Officer or the Operating Agency may deliver a greater  
26 percentage of such water in any month if such increased delivery is

1 compatible with the overall delivery of Central Arizona Project  
2 water to CAP subcontractors as determined by the Contracting  
3 Officer and the Operating Agency, and if the City agrees to accept  
4 such increased deliveries.

5 ARTICLE 7  
6 Points of Delivery--Measurement and  
7 Responsibility for Distribution of Water

7. (a) All water to be furnished to the City pursuant  
8 to this Contract shall be delivered at turnouts to be constructed  
9 by the United States at such point(s) on the water supply system as  
10 may be agreed upon in writing by the Contracting Officer and CAWCD,  
11 after consultation with the City.

12 (b) Unless the United States and the City agree by  
13 contract to the contrary, the City shall construct and install, at  
14 its sole cost and expense, connection facilities required to take  
15 and convey such water from the turnouts to the City's service  
16 area. The City shall furnish, for approval of the Contracting  
17 Officer, drawings showing the construction to be performed by the  
18 Contractor within the water supply system right-of-way six months  
19 before starting said construction. The facilities may be in-  
20 stalled, operated, and maintained on the water supply system  
21 right-of-way subject to such reasonable restrictions and regula-  
22 tions as to type, location, method of installation, operation, and  
23 maintenance as may be prescribed by the Contracting Officer.

24 (c) All water delivered to the City pursuant to  
25 this Contract shall be measured with equipment furnished and  
26 installed by the United States and operated and maintained by the

1 United States or by the Operating Agency. Upon the request of the  
2 City or the Operating Agency, the accuracy of such measurements  
3 shall be investigated by the Contracting Officer or by the Operat-  
4 ing Agency and the City, and any errors which may be mutually  
5 determined to have occurred therein shall be adjusted; Provided,  
6 That in the event the parties cannot agree on the required adjust-  
7 ment, the Contracting Officer's determination shall be conclu-  
8 sive.

9 (d) Neither the United States nor the Operating  
10 Agency shall be responsible for the control, carriage, handling,  
11 use, disposal, or distribution of water beyond the delivery  
12 point(s) agreed to pursuant to Subarticle 7(a). The City shall  
13 hold the United States and the Operating Agency harmless on account  
14 of damage or claim of damage of any nature whatsoever for which  
15 there is legal responsibility, including property damage, personal  
16 injury, or death arising out of or connected with the City's con-  
17 trol, carriage, handling, use, disposal, or distribution of water  
18 beyond said delivery point(s).

19 (e) In addition to the right of the United States  
20 under Subarticle 8.3(a)(iv) of the Repayment Contract temporarily  
21 to discontinue or reduce the amount of water to be delivered  
22 through the Central Arizona Project, the United States or the Oper-  
23 ating Agency may, after consultation with the City, temporarily  
24 discontinue or reduce the quantity of water to be furnished to the  
25 City as herein provided for the purpose of investigation, inspec-  
26 tion, maintenance, repair, or replacement of any CAP facilities or

1 any part thereof necessary for the furnishing of water to the City  
2 under this Contract, but so far as feasible the United States or  
3 the Operating Agency shall coordinate any such discontinuance or  
4 reduction with the City and shall give the City due notice in ad-  
5 vance of such temporary discontinuance or reduction, except in case  
6 of emergency, in which case no notice need be given. Neither the  
7 United States, its officers agents, and employees, nor the  
8 Operating Agency, its officers, agents, and employees, shall be  
9 liable for damages when, for any reason whatsoever, any such tem-  
10 porary discontinuance or reduction in delivery of water occurs. If  
11 any such discontinuance or temporary reduction results in deli-  
12 veries to the City of less water than what has been paid for in  
13 advance, the City shall be entitled to be reimbursed for the appro-  
14 priate proportion of advance payments of OM&R charges prior to the  
15 date of the City's next payment of OM&R charges or the City may be  
16 given credit toward the next payment of OM&R charges if the City  
17 should so desire.

18 ARTICLE 8  
19 Priority in Case of Shortage

20 8. (a) Subject to the provisions of Section 304(e) of  
21 the Colorado River Basin Project Act, in the event of a shortage of  
22 the water supplies available to the Central Arizona Project, as  
23 determined by the Contracting Officer after consultation with  
24 CAWCD, Assignment Water furnished to the City under this Contract  
25 shall be subject to reduction in the same manner and to the same  
26 . . . .

1 extent as agricultural water under Central Arizona Project agricul-  
2 tural water service subcontracts.

3 (b) In a time of shortage, the City's entitlement  
4 to Colorado River water under Subarticle 5(b)(i) of this Contract  
5 shall be determined by the following formula:

6 City's entitlement to  
7 Colorado River water  
8 in a time of shortage

$$= \frac{[(X+Y) \cdot (A+B)/(C+D)] - [(X/D) \cdot A]^*}{1}$$

8 Where: X = the City's entitlement to Central Arizona  
9 Project water for M&I water use under  
10 Article 4.12 of Contract No. 5-07-30-  
W0062, as the same may be amended or sup-  
plemented from time to time;

11 Y = 3,545 acre-feet;

12 A = the total amount of water available from  
13 the Central Arizona Project for non-Indian  
14 M&I water use (after reduction on account  
15 of losses due to evaporation and seepage  
16 estimated to occur during transportation  
17 of such water through the water supply  
system and exclusive of "Colorado River  
water" as defined herein), as determined  
by the Contracting Officer in accordance  
with the method outlined in the Record of  
Decision of the Secretary published in the  
Federal Register on March 24, 1983;

18 B = the total amount of Colorado River water  
19 available to the Cities pursuant to this  
20 Contract with the City of Glendale and  
21 like contracts with the other Cities  
(after reduction on account of losses due  
22 to evaporation and seepage estimated to  
occur during transportation of such water  
through the water supply system);

23 C = 26,000 acre-feet.

24 D = the sum of all non-Indian municipal and  
25 industrial subcontractors' entitlements to  
26 Central Arizona Project water for M&I  
water use under Article 4.12 of all non-  
Indian CAP municipal and industrial sub-

contracts, as the same may be amended or supplemented from time to time;

\* It is the intent of the parties that this calculation be performed in a manner which is consistent with the method of calculation exemplified in Tables 1 and 2 attached hereto as Exhibit "C".

(c) Notwithstanding the provisions of Subarticle 5(c) of this Contract, the City's entitlement to Colorado River water, as determined in accordance with the formula set forth in Subarticle 8(b) hereof, shall be made available to the City at the City's project turnout(s).

(d) In a time of shortage, any Colorado River water available from the 22,000 acre-feet to be obtained by the United States pursuant to Subarticle 5(a) hereof in excess of that necessary to satisfy the entitlement of the City under Subarticle 8(b) of this Contract and the entitlements of the other Cities under Subarticle 8(b) of like contracts with such Cities shall be made available by the Secretary for delivery to non-Indian CAP municipal and industrial subcontractors other than the Cities pursuant to the Central Arizona Project M&I water service subcontracts with such subcontractors, pro rata in proportion to each such subcontractor's entitlement to Central Arizona Project water for M&I use under such subcontractor's Central Arizona Project M&I water service subcontract. The manner in which this Subarticle 8(d) is intended to operate is illustrated by Tables 1 and 2 attached hereto as Exhibit "C".

. . .



ARTICLE 9  
Payments

9. (a) Subject to the provisions of Article 11 hereof, the City shall pay in advance for CAP OM&R costs estimated to be incurred by the United States or the Operating Agency in delivering Colorado River water and Assignment Water to the City pursuant to this Contract. At least 6 months prior to the first delivery of such water, or as soon thereafter as is practicable, the Contracting Officer or the Operating Agency shall furnish the City with an estimate of the City's share of OM&R costs to the end of the initial year of water delivery and an estimate of such costs for the following year. Within a reasonable time of the receipt of said estimates, as determined by the Contracting Officer or the Operating Agency, but prior to the delivery of water, the City shall advance to the Contracting Officer or the Operating Agency its share of such estimated costs to the end of the initial month of water delivery and without further notice or demand shall on or before the first day of each succeeding month of the initial year of water delivery and the following year advance to the Contracting Officer or the Operating Agency in equal monthly installments the City's share of such estimated costs. Advances of monthly payments for each subsequent year shall be made by the City to the Contracting Officer or the Operating Agency on the basis of annual estimates to be furnished by the Contracting Officer or the Operating Agency on or before June 1 preceding each said subsequent year, and the advances of payments for said estimated costs shall be due and

1 payable in equal monthly payments on or before the first day of  
2 each month of the subsequent year. Differences between actual OM&R  
3 costs and estimated OM&R costs shall be adjusted in the next suc-  
4 ceeding annual estimates; Provided, however, That if in the opinion  
5 of the Contracting Officer or the Operating Agency the amount of  
6 any annual OM&R estimate is likely to be insufficient to cover the  
7 above-mentioned costs during such period, the Contracting Officer  
8 or the Operating Agency may increase the annual estimate of the  
9 City's OM&R costs by written notice thereof to the City, and the  
10 City shall forthwith increase its remaining monthly payments in  
11 such year to the Contracting Officer or the Operating Agency by the  
12 amount necessary to cover the estimated insufficiency. All esti-  
13 mates of OM&R costs shall be accompanied by data and computations  
14 relied on by the Contracting Officer or the Operating Agency in  
15 determining the amounts of the estimated OM&R costs and shall be  
16 subject to joint review by the City and the Contracting Officer or  
17 the Operating Agency.

18 (b) Other than as provided for in Exhibit "B"  
19 hereto with respect to Assignment Water, the City shall not be  
20 required to pay any water service capital charge(s) with respect  
21 to Colorado River water or Assignment Water to which the City is  
22 entitled under this Contract.

23 (c) Payment of all OM&R charges becoming due  
24 hereunder prior to or on the dates stipulated in Subarticle 9(a)  
25 hereof is a condition precedent to receiving water under this Con-  
26 tract.

1 (d) All payments to be made to the Operating  
2 Agency or the United States under Subarticle 9(a) hereof shall be  
3 made by the City as such payments fall due from revenues legally  
4 available to the City for such payment from the sale of water to  
5 its water users and from any and all other sources which might be  
6 legally available; Provided, That no portion of the general taxing  
7 authority of the City, nor its general funds, nor funds from ad  
8 valorem taxes are obligated by the provisions of this Contract, nor  
9 shall such sources be liable for any payments, contributions, or  
10 other costs pursuant to this Contract, or to satisfy any obligation  
11 hereunder unless duly and lawfully allocated and budgeted for such  
12 purpose by the City for the applicable budget year; and Provided,  
13 further, That no portion of this Contract shall ever be construed  
14 to create an obligation superior in lien to or on a parity with the  
15 Cities' revenue bonds now or hereafter issued. The City shall  
16 levy and impose such necessary water service charges and rates and  
17 use all the authority and resources available to it to collect all  
18 such necessary water service charges and rates in order that the  
19 City may meet its obligations hereunder and make in full all pay-  
20 ments required under this Contract on or before the date such pay-  
21 ments become due.

22 ARTICLE 10  
23 Loss of Entitlement

24 10. The City shall have no right to delivery of  
25 Colorado River water or Assignment Water under this Contract during  
26 any period in which the City may be in arrears in the payment of

1 any charges due the United States or the Operating Agency. The  
2 Contracting Officer or the Operating Agency may sell to another  
3 entity any water determined to be available under the City's  
4 entitlement for which payment is in arrears; Provided, however,  
5 That, except as provided to the contrary in Exhibit "B" hereto, the  
6 City may regain the right to use any unsold portion of the water  
7 determined to be available under the City's original entitlement  
8 upon (i) payment of all delinquent charges plus any difference  
9 between the contractual obligation and the price received in the  
10 sale of the water by the Contracting Officer or Operating Agency  
11 and (ii) payment of charges for the current period.

12 ARTICLE 11  
13 Refusal to Accept Delivery

14 11. In the event the City fails or refuses in any  
15 year to accept delivery of the quantity of water available for  
16 delivery to and required to be scheduled by it pursuant to this  
17 Contract, or in the event the City in any year fails to submit a  
18 schedule for delivery as provided in Article 6 hereof, said failure  
19 or refusal shall not relieve the City of its obligation to make the  
20 payments required in this Contract.

21 ARTICLE 12  
22 Charges for Delinquent Payments

23 12. (a) The City shall be subject to interest,  
24 administrative, and penalty charges on delinquent installments or  
25 payments. When a payment is not received by the due date, the City  
26 shall pay an interest charge for each day the payment is delinquent  
beyond the due date. When a payment becomes 60 days delinquent,

1 the City shall pay an administrative charge to cover additional  
2 costs of billing and processing the delinquent payment. When a  
3 payment is delinquent 90 days or more, the City shall pay an addi-  
4 tional penalty charge of 6 percent per year for each day the pay-  
5 ment is delinquent beyond the due date. Further, the City shall  
6 pay any fees incurred for debt collection services associated with  
7 a delinquent payment.

8 (b) The interest charge rate shall be the  
9 greater of the rate prescribed quarterly in the Federal Register by  
10 the Department of the Treasury for application to overdue payments,  
11 or the interest rate of 0.5 percent per month prescribed by Section  
12 6 of the Reclamation Project Act of 1939 (Public Law 76-260). The  
13 interest charge rate shall be determined as of the due date and  
14 remain fixed for the duration of the delinquent period.

15 (c) When a partial payment on a delinquent  
16 account is received, the amount received shall be applied, first to  
17 the penalty, second to the administrative charges, third to the ac-  
18 crued interest, and finally to the overdue payment.

19 ARTICLE 13  
20 Secretarial Control of Return Flow

21 13. (a) The Secretary reserves the right to cap-  
22 ture all return flow flowing from the exterior boundaries of  
23 CAWCD's service area as a source of supply and for distribution to  
24 and use of the Central Arizona Project to the fullest extent prac-  
25 ticable. The Secretary also reserves the right to capture for CAP  
26 use return flow which originates or results from water contracted

1 for from the Central Arizona Project within the boundaries of  
2 CAWCD's service area if, in his judgment, such return flow is not  
3 being put to a beneficial use. The City may recapture and reuse or  
4 sell its return flow; Provided, however, That such return flow may  
5 not be sold for use outside Maricopa, Pinal, and Pima Counties; and  
6 Provided, further, That this does not prohibit effluent exchanges  
7 with Indian tribes pursuant to Article 6.2 of the City's Central  
8 Arizona Project M&I water service subcontract (Contract No. 5-07-  
9 30-W0062). The City shall, at least 60 days in advance of any  
10 proposed sale of such water, furnish the following information in  
11 writing to the Contracting Officer and CAWCD:

12 (i) The name and address of the prospec-  
13 tive buyer.

14 (ii) The location and proposed use of the  
15 return flow.

16 (iii) The price to be charged for the  
17 return flow.

18 (b) The price charged for the return flow may  
19 cover the cost incurred by the City for Colorado River water and  
20 Assignment Water plus the cost required to make the return flow  
21 usable. If the price received for the return flow is greater than  
22 the costs incurred by the City, as described above, the excess  
23 amount shall be forthwith paid by the City to the CAWCD for appli-  
24 cation against CAWCD's repayment obligation to the United States.  
25 Costs required to make return flow usable shall include but not be  
26 limited to capital costs and OM&R costs including transportation,

1 treatment, and distribution, and the portion thereof which may be  
2 retained by the City shall be subject to the advance approval of  
3 CAWCD and the Contracting Officer.

4 (c) Any return flow captured by the United  
5 States and determined by the Contracting Officer and CAWCD to be  
6 suitable and available for use by the City may be delivered by the  
7 United States or Operating Agency to the City as a part of the  
8 water supply for which the City has subcontracted pursuant to Con-  
9 tract No. 5-07-30-W0062, and such water shall be accounted and paid  
10 for pursuant to the provisions thereof.

11 (d) All capture, recapture, use, reuse, and  
12 sale of return flow under this article shall be in accord with  
13 Arizona water law unless such law is inconsistent with the Congres-  
14 sional directives applicable to the Central Arizona Project.

15 ARTICLE 14  
16 Water and Air Pollution Control

17 14. The City, in carrying out this Contract, shall  
18 comply with all applicable water and air pollution laws and regu-  
19 lations of the United States and the State of Arizona and shall  
20 obtain all required permits or licenses from the appropriate  
21 Federal, State, or local authorities.

22 ARTICLE 15  
23 Quality of Water

24 15. The operation and maintenance of project facil-  
25 ities shall be performed in such manner as is practicable to main-  
26 tain the quality of water made available through such facilities at  
the highest level reasonably attainable as determined by the Con-

1 tracting Officer. Neither the United States nor the Operating  
2 Agency warrants the quality of water and is under no obligation to  
3 construct or furnish water treatment facilities to maintain or  
4 better the quality of water. The City waives its right to make a  
5 claim against the United States, the Operating Agency, or any sub-  
6 contractor because of changes in water quality caused by the com-  
7 mingling of water to be delivered under this Contract with other  
8 water.

9 ARTICLE 16  
10 Equal Opportunity

11 16. During the performance of this Contract, the  
12 City agrees as follows:

13 (a) The City will not discriminate against any  
14 employee or applicant for employment because of race, color, reli-  
15 gion, sex, or national origin. The City will take affirmative  
16 action to ensure that applicants are employed, and that employees  
17 are treated during employment, without regard to their race, color,  
18 religion, sex, or national origin. Such action shall include, but  
19 not be limited to the following: employment, upgrading, demotion,  
20 or transfer; recruitment or recruitment advertising; layoff or  
21 termination; rates of pay or other forms of compensation; and sel-  
22 ection for training, including apprenticeship. The City agrees to  
23 post in conspicuous places, available to employees and applicants  
24 for employment, notices to be provided by the Contracting Officer  
25 setting forth the provisions of this nondiscrimination clause.

26 . . .



1 (b) The City will, in all solicitations or  
2 advertisements for employees placed by or on behalf of the City,  
3 state that all qualified applicants will receive consideration for  
4 employment without discrimination because of race, color, religion,  
5 sex, or national origin.

6 (c) The City will send to each labor union or  
7 representative of workers with which it has a collective bargaining  
8 agreement or other contract or understanding, a notice, to be pro-  
9 vided by the Contracting Officer, advising said labor union or  
10 workers' representative of the City's commitments under Section 202  
11 of Executive Order No. 11246 of September 24, 1965, as amended, and  
12 shall post copies of the notice in conspicuous places available to  
13 employees and applicants for employment.

14 (d) The City will comply with all provisions  
15 of Executive Order No. 11246 of September 24, 1965, as amended, and  
16 of the rules, regulations, and relevant orders of the Secretary of  
17 Labor.

18 (e) The City will furnish all information and  
19 reports required by said amended Executive Order and by the rules,  
20 regulations, and orders of the Secretary of Labor, or pursuant  
21 thereto, and will permit access to its books, records, and accounts  
22 by the Contracting Officer and the Secretary of Labor for purposes  
23 of investigation to ascertain compliance with such rules, regula-  
24 tions, and orders.

25 (f) In the event of the City's noncompliance  
26 with the nondiscrimination clauses of this Contract or with any of

1 such rules, regulations, or orders, this Contract may be canceled,  
2 terminated, or suspended, in whole or in part, and the City may be  
3 declared ineligible for further Government contracts in accordance  
4 with procedures authorized in said amended Executive Order, and  
5 such other sanctions may be imposed and remedies invoked as pro-  
6 vided in said amended Executive Order, or by rule, regulation, or  
7 order of the Secretary of Labor, or as otherwise provided by law.

8 (g) The City will include the provisions of  
9 Subarticles 16(a) through 16(g) in every subcontract or purchase  
10 order unless exempted by rules, regulations, or orders of the  
11 Secretary of Labor issued pursuant to Section 204 of said amended  
12 Executive Order, so that such provisions will be binding upon each  
13 subcontractor or vendor. The City will take such action with re-  
14 spect to any subcontract or purchase order as may be directed by  
15 the Secretary of Labor as a means of enforcing such provisions,  
16 including sanctions for noncompliance; Provided, however, That in  
17 the event the City becomes involved in, or is threatened with,  
18 litigation with a subcontractor or vendor as a result of such dir-  
19 ection, the City may request the United States to enter into such  
20 litigation to protect the interests of the United States.

21 ARTICLE 17  
22 Compliance with Civil Rights Laws and Regulations

23 17. (a) The City shall comply with Title VI of the  
24 Civil Rights Act of 1964 (42 U.S.C. 2000d), Section 504 of the  
25 Rehabilitation Act of 1975 (Public Law 93-112, as amended), the Age  
26 Discrimination Act of 1975 (42 U.S.C. 6101, et seq.) and any other

1 applicable civil rights laws, as well as with their respective  
2 implementing regulations and guidelines imposed by the U.S. Depart-  
3 ment of the Interior and/or Bureau of Reclamation.

4 (b) These statutes require that no person in  
5 the United States shall, on the grounds of race, color, national  
6 origin, handicap, or age, be excluded from participation in, be  
7 denied the benefits of, or be otherwise subjected to discrimination  
8 under any program or activity receiving financial assistance from  
9 the Bureau of Reclamation. By executing this Contract, the City  
10 agrees to immediately take any measures necessary to implement this  
11 obligation, including permitting officials of the United States to  
12 inspect premises, programs, and documents.

13 (c) The City makes this agreement in consider-  
14 ation of and for the purpose of obtaining any and all Federal  
15 grants, loans, contracts, property discounts or other Federal fin-  
16 ancial assistance extended after the date hereof to the City by the  
17 Bureau of Reclamation, including installment payments after such  
18 date on account of arrangements for Federal financial assistance  
19 which were approved before such date. The City recognizes and  
20 agrees that such Federal assistance will be extended in reliance on  
21 the representations and agreements made in this article, and that  
22 the United States reserves the right to seek judicial enforcement  
23 thereof.

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ARTICLE 18  
Notices

18. Any notice, demand, or request authorized or required by this Contract shall be deemed to have been given, on behalf of the City and CAWCD, when mailed, postage prepaid, or delivered to the Regional Director, Lower Colorado Region, Bureau of Reclamation, P.O. Box 427, Boulder City, Nevada 89005, and on behalf of the United States and CAWCD, when mailed, postage prepaid, or delivered to the Manager of the City, 5850 West Glendale Avenue, Glendale, Arizona 85301, on behalf of the City and the United States, when mailed, postage prepaid, or delivered to the General Manager, Central Arizona Water Conservation District, 23636 North Seventh Street, Phoenix, Arizona 85024. The designation of the addressee or the address may be changed by notice given in the same manner as provided in this article for other notices.

ARTICLE 19  
Assignment Limited--Successors and Assigns Obligated

19. The provisions of this Contract shall apply to and bind the successors and assigns of the parties hereto, but no assignment or transfer of this Contract or any right or interest therein shall be valid unless and until approved in writing by the Contracting Officer and CAWCD.

ARTICLE 20  
Officials Not to Benefit

20. No Member of or Delegate to Congress, Resident Commissioner, or official of the City shall benefit from this

. . .

1 Contract other than as a water user or landowner in the same manner  
2 as other water users or landowners.

3 ARTICLE 21

4 Transfer of OM&R Responsibility to CAWCD;  
5 Project Repayment

6 21. (a) At or prior to the date that the United  
7 States transfers OM&R responsibility for project works associated  
8 with delivery of water to the Cities to CAWCD as the Operating  
9 Agency, the United States shall secure the agreement of CAWCD to  
10 perform the United States' obligations under this Contract to deli-  
11 ver water under this Contract through the transferred works.

12 (b) For the purpose of determining the alloca-  
13 tion and repayment of costs of the CAP as provided in Article 9.3  
14 of the Repayment Contract and any amendment or revision thereof,  
15 the costs associated with the delivery of water to the City under  
16 this Contract shall be nonreimbursable, and such costs shall be ex-  
cluded from CAWCD's repayment obligation.

17 ARTICLE 22

18 Repayment Contract Controlling

19 22. Pursuant to the Repayment Contract, the United  
20 States has agreed to construct and, in the absence of an approved  
21 Operating Agency, to operate and maintain the works of the Central  
22 Arizona Project and to deliver Central Arizona Project water to the  
23 various subcontractors within CAWCD's service area; and CAWCD has  
24 obligated itself for the payment of various costs, expenses, and  
25 other amounts allocated to CAWCD pursuant to Article 9 of the  
26 Repayment Contract. The City expressly approves and agrees to all

1 the terms presently set out in the Repayment Contract, or as such  
2 terms may be hereafter amended, and agrees to be bound by the  
3 actions to be taken and the determinations to be made under that  
4 Repayment Contract, except as otherwise provided herein.

5 IN WITNESS WHEREOF, the parties hereto have executed this  
6 Contract No. 9-07-30-W0236 the day and year first above-  
7 written.

8 THE UNITED STATES OF AMERICA

9  
10 By 


11 CENTRAL ARIZONA WATER  
12 CONSERVATION DISTRICT

13  
14 Attest: \_\_\_\_\_  
15 Secretary

16 By \_\_\_\_\_  
17 President

18 CITY OF GLENDALE, ARIZONA

19 Attest: Jauergne Behm  
20 Clerk

21 By   
22 Mayor

23 Approved  
24 as to Form: \_\_\_\_\_  
25 City Attorney  
26

Exhibit "A"

CAP Master Repayment Contract

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Exhibit "B"

Assignment among RWCD, CAWCD and The United States  
(See Exhibit "12.3." to Agreement)

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Exhibit "C"

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EXHIBIT "3.h.3"

River Water Exchange Contract  
City of Scottsdale, Arizona

Exhibit "3.h.3"  
RIVER WATER EXCHANGE CONTRACT  
City of Scottsdale, Arizona

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Exhibit "3.h.3"  
RIVER WATER EXCHANGE CONTRACT  
City of Scottsdale, Arizona

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Exhibits

Exhibit "A"	CAP Master Repayment Contract
Exhibit "B"	Assignment among RWCD, CAWCD and the United States
Exhibit "C"	SRPMIC Agreement Water Calculations (Tables 1 and 2)

1  
2 UNITED STATES  
3 DEPARTMENT OF THE INTERIOR  
4 BUREAU OF RECLAMATION

5 CONTRACT AMONG THE UNITED STATES,  
6 THE CENTRAL ARIZONA WATER CONSERVATION DISTRICT,  
7 AND THE CITY OF SCOTTSDALE, ARIZONA  
8 PROVIDING FOR WATER SERVICE

9 ARTICLE 1  
10 Preamble

11 1. THIS CONTRACT, made as of the 12th day of February,  
12 1988, in pursuance of the Salt River Pima-Maricopa Indian Community  
13 Water Rights Settlement Act of 1988, P.L. 100-512, 102 Stat. 2549,  
14 and the Act of June 17, 1902 (32 Stat. 388), and acts amendatory  
15 thereof or supplementary thereto, including but not limited to the  
16 Boulder Canyon Project Act of December 21, 1928 (45 Stat. 1057),  
17 the Colorado River Basin Project Act of September 30, 1968 (82  
18 Stat. 885), as amended, hereinafter referred to collectively as the  
19 "Federal Reclamation Laws," and the various authorities and re-  
20 sponsibilities of the Secretary of the Interior in relation to  
21 Indians and Indian Tribes, as contained in Title 25 U.S.C. and 43  
22 U.S.C. § 1457, among THE UNITED STATES OF AMERICA, acting through  
23 the Secretary of the Interior, the CENTRAL ARIZONA WATER  
24 CONSERVATION DISTRICT, hereinafter referred to as "CAWCD," a multi-  
25 county water conservation district organized under the laws of  
26 Arizona, with its principal place of business in Phoenix, Arizona,  
and the CITY OF SCOTTSDALE, Arizona, hereinafter referred to as the  
"City," with its principal place of business at 3939 Civic Center  
Plaza, Scottsdale, Arizona;

1 WITNESSETH, THAT:

2 ARTICLE 2  
3 Explanatory Recitals

4 2. WHEREAS, the Colorado River Basin Project Act pro-  
5 vides, among other things, that for the purposes of furnishing  
6 irrigation and municipal and industrial water supplies to water  
7 deficient areas of Arizona and western New Mexico through direct  
8 diversion or exchange of water, control of floods, conservation and  
9 development of fish and wildlife resources, enhancement of recrea-  
10 tion opportunities, and for other purposes, the Secretary of the  
11 Interior shall construct, operate, and maintain the Central Arizona  
12 Project; and

13 WHEREAS, pursuant to the provisions of Arizona Revised  
14 Statutes §§ 48-3701, et seq., CAWCD has been organized with the  
15 power to enter into a contract or contracts with the Secretary of  
16 the Interior to accomplish the purposes of Arizona Revised Sta-  
17 tutes, §§ 48-3701, et seq.; and

18 WHEREAS, pursuant to Section 304(b)(1) of the Colorado  
19 River Basin Project Act, the Secretary of the Interior has deter-  
20 mined that it is necessary to effect repayment of the cost of con-  
21 structing the Central Arizona Project pursuant to a master contract  
22 and that the United States, together with CAWCD, shall be a party  
23 to contracts that are in conformity with and subsidiary to the  
24 master contract; and

25 WHEREAS, the United States and CAWCD entered into Con-  
26 tract No. 14-06-W-245 dated December 15, 1972, which was amended on

1 December 1, 1988, hereinafter referred to as the "Repayment  
2 Contract," a copy of which is attached hereto as Exhibit "A" and by  
3 this reference made a part hereof, whereby CAWCD agrees to repay to  
4 the United States the reimbursable costs of the Central Arizona  
5 Project allocated to CAWCD; and

6 WHEREAS, the City has entered into a water service sub-  
7 contract with the United States and CAWCD for municipal and indus-  
8 trial water service from water supplies available from the Central  
9 Arizona Project, Contract No. 5-07-30-W0063; and

10 WHEREAS, the United States, the State of Arizona, the  
11 Salt River Pima-Maricopa Indian Community, the Salt River Valley  
12 Water Users' Association, the Salt River Project Agricultural  
13 Improvement and Power District, the Roosevelt Water Conservation  
14 District, the Roosevelt Irrigation District, the Cities of Phoenix,  
15 Scottsdale, Glendale, Mesa, Tempe, and Chandler and the Town of  
16 Gilbert, Arizona, and CAWCD have agreed to permanently settle the  
17 water rights of the Salt River Pima-Maricopa Indian Community and  
18 its members, to finally resolve pending litigation on water rights  
19 and damage claims, and to seek funding for implementation of the  
20 settlement; and

21 WHEREAS, the United States, acting through the Secretary  
22 of the Interior, has both a trust and fiduciary responsibility to  
23 make the Salt River Pima-Maricopa Indian reservation a permanent  
24 Tribal homeland for the Salt River Pima-Maricopa Indian Community;  
25 and

26 . . .



1           WHEREAS, as part of the water rights settlement with the  
2 Salt River Pima-Maricopa Indian Community, the United States is  
3 required to contract with the City for the delivery through Central  
4 Arizona Project facilities of not to exceed one hundred (100) acre-  
5 feet per year of Colorado River water which was not included in the  
6 determination of water supplies available to the Central Arizona  
7 Project, plus certain additional amounts of Central Arizona Project  
8 water to be made available each year by the Roosevelt Water Conser-  
9 vation District or the Secretary of the Interior from Central  
10 Arizona Project water supplies otherwise available for agricultural  
11 use;

12           NOW, THEREFORE, in consideration of the mutual covenants  
13 herein contained, the parties hereto agree as follows:

14                   ARTICLE 3  
15                   Definitions

16           3.   For purposes of this Contract:

17                   (a) "Agricultural water" shall mean water made  
18 available from the Central Arizona Project for the commercial pro-  
19 duction of agricultural crops or livestock, including domestic use  
20 incidental thereto, on tracts of land operated in units of more  
21 than five acres.

22                   (b) "CAWCD's service area" shall mean the area now  
23 included within the Central Arizona Water Conservation District,  
24 consisting of Maricopa, Pinal, and Pima Counties, Arizona, and such  
25 other counties as may hereafter become part of the District,

26           . . .

1 exclusive of any Indian reservation land lying wholly or partly  
2 within said Counties.

3 (c) "Central Arizona Project" or "CAP" or "project"  
4 shall mean the project and works authorized by Section 301(a) of  
5 the Colorado River Basin Project Act and constructed by the United  
6 States pursuant to the provisions of said Act.

7 (d) "Cities" shall mean the City of Chandler, the  
8 City of Glendale, the City of Scottsdale, the City of Tempe, the  
9 City of Mesa, the City of Phoenix, and the Town of Gilbert.

10 (e) "Colorado River water" shall mean that Colorado  
11 River mainstream water to be delivered to the City under this Con-  
12 tract which has a Colorado River priority pre-dating September 30,  
13 1968.

14 (f) "Contracting Officer" shall mean the Secretary  
15 or his authorized designee acting on his behalf.

16 (g) "Distribution works" shall mean those facil-  
17 ities constructed or used for the purpose of distributing water to  
18 or within the City's service area after said water has been trans-  
19 ported through the water supply system to the City's project  
20 turnout(s).

21 (h) "Ground water recharge" shall mean the recharge  
22 of water pursuant to title 45, chapter 2, article 13, Arizona  
23 Revised Statutes, or the underground storage and recovery of water  
24 pursuant to title 45, chapter 3, Arizona Revised Statutes, as said  
25 statutes may hereafter be amended or revised.

26 . . .

1           (i) "Miscellaneous water" shall mean water made  
2 available from the Central Arizona Project, or by exchange for such  
3 water, for recreational and fish and wildlife purposes at other  
4 than project facilities, and which has a lesser priority of use  
5 than agricultural water.

6           (j) "Municipal and industrial water," hereinafter  
7 sometimes referred to as "M&I water," shall mean water made avail-  
8 able from the Central Arizona Project other than agricultural water  
9 and miscellaneous water.

10           (k) "Notice of completion" shall mean the notice  
11 which the Contracting Officer issues to CAWCD to announce the sub-  
12 stantial completion of the water supply system, or of those fea-  
13 tures of the project which include or comprise the water supply  
14 system, or of the entire project if constructed concurrently,  
15 thereby initiating payments therefor allocated to CAWCD.

16           (l) "OM&R" shall mean the care, operation, mainte-  
17 nance, and replacement of project works.

18           (m) "Operating Agency" shall mean the entity or  
19 entities authorized to assume OM&R responsibility of transferred  
20 works and approved for that purpose by the Contracting Officer.

21           (n) "Assignment Water" shall mean that water to be  
22 delivered to the City under this Contract which is made available  
23 to the City by the Roosevelt Water Conservation District ("RWCD")  
24 or the Secretary of the Interior pursuant to the Assignment, dated  
25 as of February 12, 1988, among the United States, CAWCD, RWCD,  
26 . . .

1 and the Cities. A copy of the Assignment is attached hereto as  
2 Exhibit "B" and by this reference made a part hereof.

3 (o) "Project works" shall mean the principal works  
4 described in Section 301(a) of the Colorado River Basin Project  
5 Act, and appurtenances thereto, or as modified pursuant to the  
6 payment Contract, together with lands, interests in lands, and  
7 rights-of-way for such works and appurtenances.

8 (p) "Return flow" shall mean all agricultural, M&I,  
9 and miscellaneous waste water, seepage, and ground water which  
10 originates or results from Colorado River water or Assignment Water  
11 as defined herein, but shall not include any water delivered  
12 through the project works for ground water recharge purposes.

13 (q) "Secretary" shall mean the Secretary of the  
14 Interior of the United States or his duly authorized  
15 representative.

16 (r) "Settlement Agreement" shall mean the Agreement  
17 dated as of February 12, 1988, among the United States of America,  
18 the State of Arizona, the Salt River Pima-Maricopa Indian  
19 Community, the Salt River Project Agricultural Improvement and  
20 Power District, the Salt River Valley Water Users' Association,  
21 RWCD, the Roosevelt Irrigation District, the Cities, and CAWCD.

22 (s) "Subcontractor" shall mean any irrigation dis-  
23 trict, municipality, individual, or any other entity which enters  
24 into a water service subcontract with the United States and CAWCD  
25 in furtherance of the provisions of the Colorado River Basin  
26 Project Act.

1 (t) "Time of shortage" shall mean a calendar year  
2 for which the Secretary determines that a shortage exists pursuant  
3 to Section 301(b) of the Colorado River Basin Project Act, such  
4 that there is not sufficient water available for delivery from the  
5 Central Arizona Project in that year (after reduction in considera-  
6 tion of anticipated losses due to evaporation and seepage estimated  
7 to occur during transportation of such water through the water  
8 supply system and exclusive of "Colorado River water" as defined  
9 herein) to meet fully the entitlements of Indian contractors and  
10 non-Indian municipal and industrial subcontractors of Central  
11 Arizona Project water supplies.

12 (u) "Transferred works" shall mean such features of  
13 the project or such facilities of the water supply system as to  
14 which OM&R responsibility is transferred from the United States to  
15 the Operating Agency.

16 (v) "Water supply system" shall mean Navajo  
17 Project, Havasu Pumping Plant, the Granite Reef, Salt-Gila, and  
18 Tucson aqueducts and associated pumping plants and appurtenant  
19 works, but not including Tucson Terminal Storage or any  
20 distribution works.

21 (w) "Year" shall mean the period between January 1  
22 through the next succeeding December 31.

23 ARTICLE 4  
24 Term

25 4. This Contract shall become effective upon its execu-  
26 tion by the parties hereto and its term shall be perpetual.

ARTICLE 5  
Delivery of Water

5. (a) The United States shall obtain rights to 22,000 acre-feet of annual consumptive use of mainstream Colorado River water in Arizona with a contractual priority pre-dating September 30, 1968, and which was not included in the determination of the water supplies available to the Central Arizona Project. The Secretary shall make such Colorado River water available for delivery as provided herein.

(b) Except as provided in Article 8 hereof, commencing with the year in which the Secretary issues notice of completion or the enforceability date of the Settlement Agreement, whichever is later, and for each year thereafter, the City shall be entitled to Colorado River water and Assignment Water in amounts not exceeding the following:

(i) Colorado River water -- 100 acre-feet; and

(ii) Assignment Water made available to the City by RWCD pursuant to Paragraph 2 of the Assignment attached hereto as Exhibit "B" -- 23 acre-feet; or

(iii) Assignment Water made available to the City by the Secretary pursuant to Paragraph 3 of the Assignment attached hereto as Exhibit "B" -- 14 acre-feet.

(c) The City's annual entitlement to Colorado River water under Subarticle 5(b)(i) hereof shall be deemed to be met if initially made available for delivery at CAWCD's project delivery point on the Colorado River, and shall be subject to reduction on

1 account of losses by reason of evaporation and seepage occurring  
2 during the transportation of such water through the water supply  
3 system to the City's project delivery point. Said losses occurring  
4 on the City's Colorado River water supplies shall be determined by  
5 the Contracting Officer or the Operating Agency, but shall not  
6 exceed the City's pro rata share of losses as compared to losses  
7 due to evaporation and seepage occurring during transportation  
8 through the water supply system of all water supplies delivered  
9 during a year.

10 (d) The City's entitlement to Assignment Water  
11 under Subparagraphs 5(b)(ii) and 5(b)(iii), and its rights and  
12 obligations with respect to such Assignment Water, hereof shall be  
13 subject to the terms and conditions of the Assignment attached  
14 hereto as Exhibit "B".

15 (e) The City's entitlement to Colorado River water  
16 and Assignment Water under this Contract shall be in addition to  
17 the City's entitlement to Central Arizona Project water for municipi-  
18 pal and industrial use under the City's Central Arizona Project M&I  
19 water service subcontract (Contract No. 5-07-30-W0063).

20 (f) During such periods as it operates and main-  
21 tains the Central Arizona Project, the United States shall deliver  
22 Colorado River water and Assignment Water to which the City is  
23 entitled under this Contract through the water supply system.  
24 Subject to the provisions of Subarticles 5(c) and 5(d) hereof, the  
25 United States shall use all reasonable diligence to make available  
26 to the City the quantity of Colorado River water and Assignment

1 Water specified in the schedule submitted by the City in accordance  
2 with Article 6 hereof. After transfer of OM&R responsibility to  
3 the Operating Agency, the United States shall make deliveries of  
4 Colorado River water and Assignment Water to the Operating Agency  
5 which shall make subsequent delivery of such water to the City as  
6 provided herein.

7 (g) The obligation of the United States and the  
8 Operating Agency to deliver Colorado River water and Assignment  
9 Water to the City under this Contract is subject to:

10 (i) The availability of such water for use in  
11 Arizona under the provisions of the Colorado River Compact, exe-  
12 cuted November 24, 1922; the Boulder Canyon Project Act, 45 Stat.  
13 1057, dated December 21, 1928; the Colorado River Basin Project  
14 Act, 82 Stat. 885, dated September 30, 1968, the contract between  
15 the United States and the State of Arizona dated February 9, 1944,  
16 the Opinion of the Supreme Court of the United States in the case  
17 of Arizona v. California et al., rendered June 3, 1963, 373 U.S.  
18 546, and the Decree of that court in said case, entered March 9,  
19 1964, 376 U.S. 340, as amended on February 28, 1966, at 383 U.S.  
20 268, and supplemented on January 9, 1979, at 439 U.S. 419, or as  
21 hereafter modified;

22 (ii) Executive A, Seventy-Eighth Congress,  
23 Second Session, a treaty between the United States of America and  
24 the United Mexican States, signed at Washington on February 3,  
25 1944, relating to the utilization of the waters of the Colorado and  
26 Tijuana Rivers and of the Rio Grande from Fort Quitman, Texas, to



1 the Gulf of Mexico, and Executive H, Seventy-eighth Congress,  
2 Second Session, a protocol signed at Washington on November 14,  
3 1944, supplementary to the Treaty, all hereinafter referred to as  
4 the Mexican Water Treaty;

5 (iii) The express understanding and agreement by  
6 the City that this Contract is subject to the condition that Hoover  
7 Dam and Lake Mead shall be used: first, for river regulation,  
8 improvement of navigation, and flood control; second, for irriga-  
9 tion and domestic uses and satisfaction of present perfected rights  
10 in pursuance of Article VIII of the Colorado River Compact approved  
11 by Section 13(a) of the Boulder Canyon Project Act; and third, for  
12 power; and furthermore, that this Contract is made upon the express  
13 condition and with the express covenant that all rights hereunder  
14 shall be subject to and controlled by the Colorado River Compact  
15 and that the United States and City shall observe and be subject to  
16 and controlled by said Colorado River Compact and Boulder Canyon  
17 Project Act in the construction, management, and operation of  
18 Hoover Dam, Lake Mead, canals and other works, and the storage,  
19 diversion, delivery, and use of water to be delivered to City here-  
20 under; and

21 (iv) The right of the United States or the  
22 Operating Agency temporarily to discontinue or reduce the amount of  
23 water to be delivered hereunder whenever such discontinuance or  
24 reduction is made necessary for purposes of investigations, in-  
25 spections, replacements, maintenance, or repairs to any works what-  
26 soever affecting, utilized or, in the opinion of the Secretary or

1 the Operating Agency, necessary for delivery of water hereunder, it  
2 being understood that so far as feasible the United States or the  
3 Operating Agency will (i) do so during periods of low water demands  
4 and (ii) give reasonable notice in advance of such temporary dis-  
5 continuance or reduction.

6 (h) Subject to the terms and conditions herein, the  
7 United States and the Operating Agency shall be obligated to deli-  
8 ver Colorado River water and Assignment Water to the City without  
9 regard as to whether or not the Salt River Pima-Maricopa Indian  
10 Community exercises its right to use any or all of the exchange  
11 water referred to in Paragraph 12 of the Settlement Agreement.

12 (i) Delivery and use of Colorado River water and  
13 Assignment Water under this Contract is further conditioned on the  
14 following, and the City hereby agrees that:

15 (i) All uses of Colorado River water,  
16 Assignment Water and return flow shall be consistent with Arizona  
17 water law unless such law is inconsistent with the Congressional  
18 directives applicable to the Central Arizona Project.

19 (ii) The system or systems through which  
20 Colorado River water and Assignment Water for municipal and indus-  
21 trial (including groundwater recharge) purposes is conveyed after  
22 delivery to the City shall consist of pipelines, canals,  
23 distribution systems, or other conduits provided and maintained  
24 with linings adequate in the Contracting Officer's judgment to  
25 prevent excessive conveyance losses.

26 . . .

1 (iii) The City shall not pump, or within its  
2 legal authority, permit others to pump ground water from within the  
3 exterior boundaries of the City's service area, which has been  
4 delineated on a map filed with the Contractor and approved by the  
5 Contractor and the Contracting Officer, for use outside of said  
6 service area unless such pumping is permitted under Title 45,  
7 Chapter 2, Arizona Revised Statutes, as it may be amended from time  
8 to time, and the Contracting Officer, CAWCD, and the City shall  
9 agree, or shall have previously agreed, that a surplus of ground  
10 water exists and drainage is or was required; Provided, however,  
11 That such pumping may be approved by the Contracting Officer and  
12 CAWCD, and approval shall not be unreasonably withheld, if such  
13 pumping is in accord with the Colorado River Basin Project Act and  
14 upon submittal by the City of a written certification from the  
15 Arizona Department of Water Resources or its successor agency that  
16 the pumping and transportation of ground water is in accord with  
17 Title 45, Chapter 2, Arizona Revised Statutes, as it may be amended  
18 from time to time.

19 (iv) The City shall not sell or otherwise dis-  
20 pose of or permit the sale or other disposition of Colorado River  
21 water or Assignment Water for use outside of Maricopa, Pinal, and  
22 Pima Counties; Provided, however, That this does not prohibit ex-  
23 changes of Colorado River water and Assignment Water covered by  
24 separate agreements; and Provided, further, That this does not  
25 prohibit effluent exchanges with Indian tribes pursuant to Article  
26 . . .

1 6.2 of the City's Central Arizona Project M&I water service subcon-  
2 tract (Contract No. 5-07-30-W0063).

3 (j) (i) Colorado River water and Assignment Water  
4 scheduled for delivery in any year under this contract may be used  
5 by the City or resold or exchanged by the City pursuant to appro-  
6 priate agreements approved by the Contracting Officer and CAWCD.  
7 If said water is resold or exchanged by the Contractor for an  
8 amount in excess of that which the City is obligated to pay under  
9 this Contract, the excess amount shall be paid forthwith by the  
10 City to CAWCD for application against the CAWCD's repayment obli-  
11 gation to the United States; Provided, however, That the Contractor  
12 shall be entitled to recover actual costs of transportation, treat-  
13 ment, and distribution, including but not limited to OM&R costs.

14 (ii) Colorado River water and Assignment Water  
15 scheduled for delivery in any year under this Contract that cannot  
16 be used, resold, or exchanged by the City may be made available by  
17 the Contracting Officer or the Operating Agency to other users. If  
18 such water is sold to or exchanged with other users, the City shall  
19 be relieved of its payments hereunder only to the extent of the  
20 amount paid to the Contracting Officer and the Operating Agency by  
21 such other users, but not to exceed the amount the City is  
22 obligated to pay under this Contract for said water.

23 (iii) In the event the City, the Contracting  
24 Officer, or the Operating Agency is unable to sell any portion of  
25 the Colorado River water or Assignment Water scheduled for delivery  
26 by the City but not required by the City in any year, the City

1 shall be relieved of the pumping energy portion of the OM&R charges  
2 associated with the undelivered water as determined by the  
3 Contracting Officer or the Operating Agency.

4 (k) The City shall have the right to use Colorado  
5 River water and Assignment Water received under this Contract for  
6 any purpose consistent with Arizona law, including ground water  
7 recharge.

8 ARTICLE 6  
9 Procedure for Ordering Water

10 6. At least six months prior to the delivery of  
11 Colorado River water and Assignment Water to the City under this  
12 Contract, the Contracting Officer or the Operating Agency shall  
13 issue a written notice of availability of such water to the City.  
14 The City will, in accordance with the procedures hereinafter set  
15 out, submit written schedules to the Contracting Officer and the  
16 Operating Agency showing the quantities of (i) Colorado River water  
17 and (ii) Assignment Water requested for delivery. The City shall  
18 submit a schedule which requests the delivery of all Assignment  
19 Water available to it. If the first notice of availability of  
20 water is issued to the City by the Contracting Officer or the  
21 Operating Agency prior to June 1 of any year, the first schedule  
22 for the balance of said year shall be submitted to the Contracting  
23 Officer and the Operating Agency within 30 days after the City's  
24 receipt of such notice. If such notice is issued after June 1 of  
25 any year, the first schedule shall be submitted to the Contracting  
26 Officer and the Operating Agency within 30 days after the City's

1 receipt of such notice and shall cover the balance of such year and  
2 the next succeeding year. Thereafter, the amounts, times, and  
3 rates of delivery of water to the City during any year shall be in  
4 accordance with a water delivery schedule for that year, such sche-  
5 dule to be determined in the following manner:

6 (a) On or before June 1 of each year, the Contract-  
7 ing Officer shall announce (i) the amount of Colorado River water  
8 and (ii) the amount of Assignment Water available for delivery  
9 during the following year in a written notice to the Operating  
10 Agency and the City.

11 (b) On or before October 1 of each year, the City  
12 shall submit in writing to the Operating Agency and the Contracting  
13 Officer a water delivery schedule indicating the amounts of (i)  
14 Colorado River water and (ii) Assignment Water desired by the City  
15 during each month of the following year along with a preliminary  
16 schedule of water desired for the succeeding 2 years. The City  
17 shall schedule for delivery each year all Assignment Water  
18 available to it for delivery during that year.

19 (c) Upon receipt of such schedule, the Contracting  
20 Officer and the Operating Agency shall review it and, after con-  
21 sultation with the City, shall make only such modifications to the  
22 schedule as are necessary to ensure that the amounts, times, and  
23 rates of delivery to the City are consistent with the delivery  
24 capability of the project, considering, among other things, the  
25 availability of water and the delivery schedules of all subcon-  
26 tractors of Central Arizona Project water service; Provided, That

1 this provision shall not be construed to reduce annual deliveries  
2 to the City.

3 (d) On or before November 15 of each year, the  
4 Contracting Officer or the Operating Agency shall determine and  
5 furnish to the City the water delivery schedule for the next suc-  
6 ceeding year which shall show the amounts of (i) Colorado River  
7 water and (ii) Assignment Water to be delivered to the City during  
8 each month of that year.

9 (e) The monthly water delivery schedules may be  
10 amended by the Contracting Officer or the Operating Agency upon the  
11 City's written request. Proposed amendments shall be submitted by  
12 the City within a reasonable time before the desired change is to  
13 become effective, and shall be subject to review and modification  
14 by the Contracting Officer or the Operating Agency in like manner  
15 as the schedule itself.

16 (f) In no event shall the Contracting Officer or  
17 the Operating Agency be required to deliver in any one month (i) an  
18 amount of Colorado River water greater than eleven percent (11%) of  
19 the City's maximum annual entitlement to Colorado River water under  
20 Subarticle 5(b)(i) of this Contract or (ii) an amount of Assignment  
21 Water greater than eleven percent (11%) of the City's maximum  
22 annual entitlement to Assignment Water under Subarticle 5(b)(ii) or  
23 5(b)(iii) of this Contract; Provided, however, That the Contracting  
24 Officer or the Operating Agency may deliver a greater percentage of  
25 such water in any month if such increased delivery is compatible  
26 with the overall delivery of Central Arizona Project water to CAP

1 subcontractors as determined by the Contracting Officer and the  
2 Operating Agency, and if the City agrees to accept such increased  
3 deliveries.

4 ARTICLE 7

5 Points of Delivery--Measurement and  
6 Responsibility for Distribution of Water

7 7. (a) All water to be furnished to the City pursuant  
8 to this Contract shall be delivered at turnouts to be constructed  
9 by the United States at such point(s) on the water supply system as  
10 may be agreed upon in writing by the Contracting Officer and CAWCD,  
11 after consultation with the City.

12 (b) Unless the United States and the City agree by  
13 contract to the contrary, the City shall construct and install, at  
14 its sole cost and expense, connection facilities required to take  
15 and convey such water from the turnouts to the City's service  
16 area. The City shall furnish, for approval of the Contracting  
17 Officer, drawings showing the construction to be performed by the  
18 Contractor within the water supply system right-of-way six months  
19 before starting said construction. The facilities may be  
20 installed, operated, and maintained on the water supply system  
21 right-of-way subject to such reasonable restrictions and regula-  
22 tions as to type, location, method of installation, operation, and  
23 maintenance as may be prescribed by the Contracting Officer.

24 (c) All water delivered to the City pursuant to  
25 this Contract shall be measured with equipment furnished and  
26 installed by the United States and operated and maintained by the  
United States or by the Operating Agency. Upon the request of the



1 City or the Operating Agency, the accuracy of such measurements  
2 shall be investigated by the Contracting Officer or by the Operat-  
3 ing Agency and the City, and any errors which may be mutually de-  
4 termined to have occurred therein shall be adjusted; Provided, That  
5 in the event the parties cannot agree on the required adjustment,  
6 the Contracting Officer's determination shall be conclusive.

7 (d) Neither the United States nor the Operating  
8 Agency shall be responsible for the control, carriage, handling,  
9 use, disposal, or distribution of water beyond the delivery  
10 point(s) agreed to pursuant to Subarticle 7(a). The City shall  
11 hold the United States and the Operating Agency harmless on account  
12 of damage or claim of damage of any nature whatsoever for which  
13 there is legal responsibility, including property damage, personal  
14 injury, or death arising out of or connected with the City's con-  
15 trol, carriage, handling, use, disposal, or distribution of water  
16 beyond said delivery point(s).

17 (e) In addition to the right of the United States  
18 under Subarticle 8.3(a)(iv) of the Repayment Contract temporarily  
19 to discontinue or reduce the amount of water to be delivered  
20 through the Central Arizona Project, the United States or the  
21 Operating Agency may, after consultation with the City, temporarily  
22 discontinue or reduce the quantity of water to be furnished to the  
23 City as herein provided for the purpose of investigation, inspec-  
24 tion, maintenance, repair, or replacement of any CAP facilities or  
25 any part thereof necessary for the furnishing of water to the City  
26 under this Contract, but so far as feasible the United States or

1 the Operating Agency shall coordinate any such discontinuance or  
2 reduction with the City and shall give the City due notice in ad-  
3 vance of such temporary discontinuance or reduction, except in case  
4 of emergency, in which case no notice need be given. Neither the  
5 United States, its officers agents, and employees, nor the  
6 Operating Agency, its officers, agents, and employees, shall be  
7 liable for damages when, for any reason whatsoever, any such tem-  
8 porary discontinuance or reduction in delivery of water occurs. If  
9 any such discontinuance or temporary reduction results in deli-  
10 veries to the City of less water than what has been paid for in  
11 advance, the City shall be entitled to be reimbursed for the appro-  
12 priate proportion of advance payments of OM&R charges prior to the  
13 date of the City's next payment of OM&R charges or the City may be  
14 given credit toward the next payment of OM&R charges if the City  
15 should so desire.

16 ARTICLE 8  
17 Priority in Case of Shortage

18 8. (a) Subject to the provisions of Section 304(e) of  
19 the Colorado River Basin Project Act, in the event of a shortage of  
20 the water supplies available to the Central Arizona Project, as  
21 determined by the Contracting Officer after consultation with  
22 CAWCD, Assignment Water furnished to the City under this Contract  
23 shall be subject to reduction in the same manner and to the same  
24 extent as agricultural water under Central Arizona Project agricul-  
25 tural water service subcontracts.

26 . . . .

(b) In a time of shortage, the City's entitlement to Colorado River water under Subarticle 5(b)(i) of this Contract shall be determined by the following formula:

City's entitlement to Colorado River water in a time of shortage = 
$$\frac{[(X+Y) \cdot (A+B)/(C+D)] - [(X/D) \cdot A]^*}{1}$$

Where X = the City's entitlement to Central Arizona Project water for M&I water use under Article 4.12 of Contract No. 5-07-30-W0063, as the same may be amended or supplemented from time to time;

Y = 118 acre-feet;

A = the total amount of water available from the Central Arizona Project for non-Indian M&I water use (after reduction on account of losses due to evaporation and seepage estimated to occur during transportation of such water through the water supply system and exclusive of "Colorado River water" as defined herein), as determined by the Contracting Officer in accordance with the method outlined in the Record of Decision of the Secretary published in the Federal Register on March 24, 1983;

B = the total amount of Colorado River water available to the Cities pursuant to this Contract with the City of Scottsdale and like contracts with the other Cities (after reduction on account of losses due to evaporation and seepage estimated to occur during transportation of such water through the water supply system);

C = 26,000 acre-feet.

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1 operate is illustrated by Tables 1 and 2 attached hereto as Exhibit  
2 "C".

3 ARTICLE 9  
4 Payments

5 9. (a) Subject to the provisions of Article 11 hereof,  
6 the City shall pay in advance for CAP OM&R costs estimated to be  
7 incurred by the United States or the Operating Agency in delivering  
8 Colorado River water and Assignment Water to the City pursuant to  
9 this Contract. At least 6 months prior to the first delivery of  
10 such water, or as soon thereafter as is practicable, the Con-  
11 tracting Officer or the Operating Agency shall furnish the City  
12 with an estimate of the City's share of OM&R costs to the end of  
13 the initial year of water delivery and an estimate of such costs  
14 for the following year. Within a reasonable time of the receipt of  
15 said estimates, as determined by the Contracting Officer or the  
16 Operating Agency, but prior to the delivery of water, the City  
17 shall advance to the Contracting Officer or the Operating Agency  
18 its share of such estimated costs to the end of the initial month  
19 of water delivery and without further notice or demand shall on or  
20 before the first day of each succeeding month of the initial year  
21 of water delivery and the following year advance to the Contracting  
22 Officer or the Operating Agency in equal monthly installments the  
23 City's share of such estimated costs. Advances of monthly payments  
24 for each subsequent year shall be made by the City to the Contract-  
25 ing Officer or the Operating Agency on the basis of annual esti-  
26 mates to be furnished by the Contracting Officer or the Operating

1 Agency on or before June 1 preceding each said subsequent year, and  
2 the advances of payments for said estimated costs shall be due and  
3 payable in equal monthly payments on or before the first day of  
4 each month of the subsequent year. Differences between actual OM&R  
5 costs and estimated OM&R costs shall be adjusted in the next suc-  
6 ceeding annual estimates; Provided, however, That if in the opinion  
7 of the Contracting Officer or the Operating Agency the amount of  
8 any annual OM&R estimate is likely to be insufficient to cover the  
9 above-mentioned costs during such period, the Contracting Officer  
10 or the Operating Agency may increase the annual estimate of the  
11 City's OM&R costs by written notice thereof to the City, and the  
12 City shall forthwith increase its remaining monthly payments in  
13 such year to the Contracting Officer or the Operating Agency by the  
14 amount necessary to cover the estimated insufficiency. All esti-  
15 mates of OM&R costs shall be accompanied by data and computations  
16 relied on by the Contracting Officer or the Operating Agency in  
17 determining the amounts of the estimated OM&R costs and shall be  
18 subject to joint review by the City and the Contracting Officer or  
19 the Operating Agency.

20 (b) Other than as provided for in Exhibit "B" here-  
21 to with respect to Assignment Water, the City shall not be required  
22 to pay any water service capital charge(s) with respect to Colorado  
23 River water or Assignment Water to which the City is entitled under  
24 this Contract.

25 . . .

26 . . .

1 (c) Payment of all OM&R charges becoming due here-  
2 under prior to or on the dates stipulated in Subarticle 9(a) hereof  
3 is a condition precedent to receiving water under this Contract.

4 (d) All payments to be made to the Operating Agency  
5 or the United States under Subarticle 9(a) hereof shall be made by  
6 the City as such payments fall due from revenues legally available  
7 to the City for such payment from the sale of water to its water  
8 users and from any and all other sources which might be legally  
9 available; Provided, That no portion of the general taxing author-  
10 ity of the City, nor its general funds, nor funds from ad valorem  
11 taxes are obligated by the provisions of this Contract, nor shall  
12 such sources be liable for any payments, contributions, or other  
13 costs pursuant to this Contract, or to satisfy any obligation here-  
14 under unless duly and lawfully allocated and budgeted for such  
15 purpose by the City for the applicable budget year; and Provided,  
16 further, That no portion of this Contract shall ever be construed  
17 to create an obligation superior in lien to or on a parity with the  
18 Cities' revenue bonds now or hereafter issued. The City shall levy  
19 and impose such necessary water service charges and rates and use  
20 all the authority and resources available to it to collect all such  
21 necessary water service charges and rates in order that the City  
22 may meet its obligations hereunder and make in full all payments  
23 required under this Contract on or before the date such payments  
24 become due.

25 . . .

26 . . .

1                                    ARTICLE 10  
2                                    Loss of Entitlement

3                    10. The City shall have no right to delivery of Colorado  
4 River water or Assignment Water under this Contract during any  
5 period in which the City may be in arrears in the payment of any  
6 charges due the United States or the Operating Agency. The Con-  
7 tracting Officer or the Operating Agency may sell to another entity  
8 any water determined to be available under the City's entitlement  
9 for which payment is in arrears; Provided, however, That, except as  
10 provided to the contrary in Exhibit "B" hereto, the City may regain  
11 the right to use any unsold portion of the water determined to be  
12 available under the City's original entitlement upon (i) payment of  
13 all delinquent charges plus any difference between the contractual  
14 obligation and the price received in the sale of the water by the  
15 Contracting Officer or Operating Agency and (ii) payment of charges  
16 for the current period.

17                                    ARTICLE 11  
18                                    Refusal to Accept Delivery

19                    11. In the event the City fails or refuses in any year  
20 to accept delivery of the quantity of water available for delivery  
21 to and required to be scheduled by it pursuant to this Contract, or  
22 in the event the City in any year fails to submit a schedule for  
23 delivery as provided in Article 6 hereof, said failure or refusal  
24 shall not relieve the City of its obligation to make the payments  
25 required in this Contract.

26                    . . .

                    . . .



ARTICLE 12  
Charges for Delinquent Payments

12. (a) The City shall be subject to interest, administrative, and penalty charges on delinquent installments or payments. When a payment is not received by the due date, the City shall pay an interest charge for each day the payment is delinquent beyond the due date. When a payment becomes 60 days delinquent, the City shall pay an administrative charge to cover additional costs of billing and processing the delinquent payment. When a payment is delinquent 90 days or more, the City shall pay an additional penalty charge of 6 percent per year for each day the payment is delinquent beyond the due date. Further, the City shall pay any fees incurred for debt collection services associated with a delinquent payment.

(b) The interest charge rate shall be the greater of the rate prescribed quarterly in the Federal Register by the Department of the Treasury for application to overdue payments, or the interest rate of 0.5 percent per month prescribed by Section 6 of the Reclamation Project Act of 1939 (Public Law 76-260). The interest charge rate shall be determined as of the due date and remain fixed for the duration of the delinquent period.

(c) When a partial payment on a delinquent account is received, the amount received shall be applied, first to the penalty, second to the administrative charges, third to the accrued interest, and finally to the overdue payment.

. . .

ARTICLE 13  
Secretarial Control of Return Flow

13. (a) The Secretary reserves the right to capture all return flow flowing from the exterior boundaries of CAWCD's service area as a source of supply and for distribution to and use of the Central Arizona Project to the fullest extent practicable. The Secretary also reserves the right to capture for CAP use return flow which originates or results from water contracted for from the Central Arizona Project within the boundaries of CAWCD's service area if, in his judgment, such return flow is not being put to a beneficial use. The City may recapture and reuse or sell its return flow; Provided, however, That such return flow may not be sold for use outside Maricopa, Pinal, and Pima Counties; and Provided, further, That this does not prohibit effluent exchanges with Indian tribes pursuant to Article 6.2 of the City's Central Arizona Project M&I water service subcontract (Contract No. 5-07-30-W0063). The City shall, at least 60 days in advance of any proposed sale of such water, furnish the following information in writing to the Contracting Officer and CAWCD:

(i) The name and address of the prospective buyer.

(ii) The location and proposed use of the return flow.

(iii) The price to be charged for the return flow.

. . .

1           (b) The price charged for the return flow may cover  
2 the cost incurred by the City for Colorado River water and  
3 Assignment Water plus the cost required to make the return flow  
4 usable. If the price received for the return flow is greater than  
5 the costs incurred by the City, as described above, the excess  
6 amount shall be forthwith paid by the City to the CAWCD for appli-  
7 cation against CAWCD's repayment obligation to the United States.  
8 Costs required to make return flow usable shall include but not be  
9 limited to capital costs and OM&R costs including transportation,  
10 treatment, and distribution, and the portion thereof which may be  
11 retained by the City shall be subject to the advance approval of  
12 CAWCD and the Contracting Officer.

13           (c) Any return flow captured by the United States  
14 and determined by the Contracting Officer and CAWCD to be suitable  
15 and available for use by the City may be delivered by the United  
16 States or Operating Agency to the City as a part of the water  
17 supply for which the City has subcontracted pursuant to Contract  
18 No. 5-07-30-W0063, and such water shall be accounted and paid for  
19 pursuant to the provisions thereof.

20           (d) All capture, recapture, use, reuse, and sale of  
21 return flow under this article shall be in accord with Arizona  
22 water law unless such law is inconsistent with the Congressional  
23 directives applicable to the Central Arizona Project.

24 . . .

25 . . .

26 . . .

1                                    ARTICLE 14  
2                                    Water and Air Pollution Control

3                    14. The City, in carrying out this Contract, shall  
4                    comply with all applicable water and air pollution laws and regula-  
5                    tions of the United States and the State of Arizona and shall  
6                    obtain all required permits or licenses from the appropriate  
7                    Federal, State, or local authorities.

8                                    ARTICLE 15  
9                                    Quality of Water

10                   15. The operation and maintenance of project facilities  
11                   shall be performed in such manner as is practicable to maintain the  
12                   quality of water made available through such facilities at the  
13                   highest level reasonably attainable as determined by the Contract-  
14                   ing Officer. Neither the United States nor the Operating Agency  
15                   warrants the quality of water and is under no obligation to con-  
16                   struct or furnish water treatment facilities to maintain or better  
17                   the quality of water. The City waives its right to make a claim  
18                   against the United States, the Operating Agency, or any subcon-  
19                   tractor because of changes in water quality caused by the com-  
20                   mingling of water to be delivered under this Contract with other  
21                   water.

22                                    ARTICLE 16  
23                                    Equal Opportunity

24                   16. During the performance of this Contract, the City  
25                   agrees as follows:

26                                      (a) The City will not discriminate against any  
   employee or applicant for employment because of race, color, reli-

1 gion, sex, or national origin. The City will take affirmative  
2 action to ensure that applicants are employed, and that employees  
3 are treated during employment, without regard to their race, color,  
4 religion, sex, or national origin. Such action shall include, but  
5 not be limited to the following: employment, upgrading, demotion,  
6 or transfer; recruitment or recruitment advertising; layoff or  
7 termination; rates of pay or other forms of compensation; and  
8 selection for training, including apprenticeship. The City agrees  
9 to post in conspicuous places, available to employees and appli-  
10 cants for employment, notices to be provided by the Contracting  
11 Officer setting forth the provisions of this nondiscrimination  
12 clause.

13 (b) The City will, in all solicitations or adver-  
14 tisements for employees placed by or on behalf of the City, state  
15 that all qualified applicants will receive consideration for  
16 employment without discrimination because of race, color, religion,  
17 sex, or national origin.

18 (c) The City will send to each labor union or rep-  
19 resentative of workers with which it has a collective bargaining  
20 agreement or other contract or understanding, a notice, to be pro-  
21 vided by the Contracting Officer, advising said labor union or  
22 workers' representative of the City's commitments under Section 202  
23 of Executive Order No. 11246 of September 24, 1965, as amended, and  
24 shall post copies of the notice in conspicuous places available to  
25 employees and applicants for employment.

26 . . . .

1 (d) The City will comply with all provisions of  
2 Executive Order No. 11246 of September 24, 1965, as amended, and of  
3 the rules, regulations, and relevant orders of the Secretary of  
4 Labor.

5 (e) The City will furnish all information and  
6 reports required by said amended Executive Order and by the rules,  
7 regulations, and orders of the Secretary of Labor, or pursuant  
8 thereto, and will permit access to its books, records, and accounts  
9 by the Contracting Officer and the Secretary of Labor for purposes  
10 of investigation to ascertain compliance with such rules, regula-  
11 tions, and orders.

12 (f) In the event of the City's noncompliance with  
13 the nondiscrimination clauses of this Contract or with any of such  
14 rules, regulations, or orders, this Contract may be canceled, term-  
15 inated, or suspended, in whole or in part, and the City may be  
16 declared ineligible for further Government contracts in accordance  
17 with procedures authorized in said amended Executive Order, and  
18 such other sanctions may be imposed and remedies invoked as pro-  
19 vided in said amended Executive Order, or by rule, regulation, or  
20 order of the Secretary of Labor, or as otherwise provided by law.

21 (g) The City will include the provisions of Sub-  
22 articles 16(a) through 16(g) in every subcontract or purchase order  
23 unless exempted by rules, regulations, or orders of the Secretary  
24 of Labor issued pursuant to Section 204 of said amended Executive  
25 Order, so that such provisions will be binding upon each subcon-  
26 tractor or vendor. The City will take such action with respect to

1 any subcontract or purchase order as may be directed by the Secre-  
2 tary of Labor as a means of enforcing such provisions, including  
3 sanctions for noncompliance; Provided, however, That in the event  
4 the City becomes involved in, or is threatened with, litigation  
5 with a subcontractor or vendor as a result of such direction, the  
6 City may request the United States to enter into such litigation to  
7 protect the interests of the United States.

#### 8 ARTICLE 17

#### 9 Compliance with Civil Rights Laws and Regulations

10 17. (a) The City shall comply with Title VI of the  
11 Civil Rights Act of 1964 (42 U.S.C. 2000d), Section 504 of the  
12 Rehabilitation Act of 1975 (Public Law 93-112, as amended), the Age  
13 Discrimination Act of 1975 (42 U.S.C. 6101, et seq.) and any other  
14 applicable civil rights laws, as well as with their respective  
15 implementing regulations and guidelines imposed by the U.S. Depart-  
16 ment of the Interior and/or Bureau of Reclamation.

17 (b) These statutes require that no person in the  
18 United States shall, on the grounds of race, color, national ori-  
19 gin, handicap, or age, be excluded from participation in, be denied  
20 the benefits of, or be otherwise subjected to discrimination under  
21 any program or activity receiving financial assistance from the  
22 Bureau of Reclamation. By executing this Contract, the City agrees  
23 to immediately take any measures necessary to implement this obli-  
24 gation, including permitting officials of the United States to  
25 inspect premises, programs, and documents.

26 . . . .

1 (c) The City makes this agreement in consideration  
2 of and for the purpose of obtaining any and all Federal grants,  
3 loans, contracts, property discounts or other Federal financial  
4 assistance extended after the date hereof to the City by the Bureau  
5 of Reclamation, including installment payments after such date on  
6 account of arrangements for Federal financial assistance which were  
7 approved before such date. The City recognizes and agrees that  
8 such Federal assistance will be extended in reliance on the repre-  
9 sentations and agreements made in this article, and that the United  
10 States reserves the right to seek judicial enforcement thereof.

11 ARTICLE 18  
12 Notices

13 18. Any notice, demand, or request authorized or re-  
14 quired by this Contract shall be deemed to have been given, on  
15 behalf of the City and CAWCD, when mailed, postage prepaid, or  
16 delivered to the Regional Director, Lower Colorado Region, Bureau  
17 of Reclamation, P.O. Box 427, Boulder City, Nevada 89005, and on  
18 behalf of the United States and CAWCD, when mailed, postage pre-  
19 paid, or delivered to the Manager of the City, 3939 Civic Center  
20 Plaza, Scottsdale, Arizona 85251, on behalf of the City and the  
21 United States, when mailed, postage prepaid, or delivered to the  
22 General Manager, Central Arizona Water Conservation District, 23636  
23 North Seventh Street, Phoenix, Arizona 85024. The designation of  
24 the addressee or the address may be changed by notice given in the  
25 same manner as provided in this article for other notices.

26 . . .



ARTICLE 19

Assignment Limited--Successors and Assigns Obligated

19. The provisions of this Contract shall apply to and bind the successors and assigns of the parties hereto, but no assignment or transfer of this Contract or any right or interest therein shall be valid unless and until approved in writing by the Contracting Officer and CAWCD.

ARTICLE 20

Officials Not to Benefit

20. No Member of or Delegate to Congress, Resident Commissioner, or official of the City shall benefit from this Contract other than as a water user or landowner in the same manner as other water users or landowners.

ARTICLE 21

Transfer of OM&R Responsibility to CAWCD;  
Project Repayment

21. (a) At or prior to the date that the United States transfers OM&R responsibility for project works associated with delivery of water to the Cities to CAWCD as the Operating Agency, the United States shall secure the agreement of CAWCD to perform the United States' obligations under this Contract to deliver water under this Contract through the transferred works.

(b) For the purpose of determining the allocation and repayment of costs of the CAP as provided in Article 9.3 of the Repayment Contract and any amendment or revision thereof, the costs associated with the delivery of water to the City under this Contract shall be nonreimbursable, and such costs shall be excluded from CAWCD's repayment obligation.

ARTICLE 22  
Repayment Contract Controlling

22. Pursuant to the Repayment Contract, the United States has agreed to construct and, in the absence of an approved Operating Agency, to operate and maintain the works of the Central Arizona Project and to deliver Central Arizona Project water to the various subcontractors within CAWCD's service area; and CAWCD has obligated itself for the payment of various costs, expenses, and other amounts allocated to CAWCD pursuant to Article 9 of the Repayment Contract. The City expressly approves and agrees to all the terms presently set out in the 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 Repayment Contract, except as otherwise provided herein.

IN WITNESS WHEREOF, the parties hereto have executed this Contract No. 9-07-30-W0237 the day and year first above-written.

THE UNITED STATES OF AMERICA

By 

CENTRAL ARIZONA WATER CONSERVATION  
DISTRICT

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

By \_\_\_\_\_  
President

. . .

. . .

. . .

CITY OF SCOTTSDALE, ARIZONA

Attest:

Clerk

By

Mayor

Approved

as to Form:

City Attorney

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Exhibit "A"

CAP Master Repayment Contract

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Exhibit "B"

Assignment among RWCD, CAWCD and The United States  
(See Exhibit "12.3." to Agreement)

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Exhibit "C"

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EXHIBIT "3.h.4."

River Water Exchange Contract  
City of Tempe, Arizona



Exhibit "3.h.4"  
RIVER WATER EXCHANGE CONTRACT  
City of Tempe, Arizona

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Exhibit "3.h.4"  
RIVER WATER EXCHANGE CONTRACT  
City of Tempe, Arizona

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Exhibits

Exhibit "A"	CAP Master Repayment Contract
Exhibit "B"	Assignment among RWCD, CAWCD and the United States
Exhibit "C"	SRPMIC Agreement Water Calculations (Tables 1 and 2)

1  
2 UNITED STATES  
3 DEPARTMENT OF THE INTERIOR  
4 BUREAU OF RECLAMATION

5 CONTRACT AMONG THE UNITED STATES,  
6 THE CENTRAL ARIZONA WATER CONSERVATION DISTRICT,  
7 AND THE CITY OF TEMPE, ARIZONA  
8 PROVIDING FOR WATER SERVICE

9 ARTICLE 1  
10 Preamble

11 1. THIS CONTRACT, made as of the 12th day of February,  
12 1988, in pursuance of the Salt River Pima-Maricopa Indian Community  
13 Water Rights Settlement Act of 1988, P.L. 100-512, 102 Stat. 2549,  
14 and the Act of June 17, 1902 (32 Stat. 388), and acts amendatory  
15 thereof or supplementary thereto, including but not limited to the  
16 Boulder Canyon Project Act of December 21, 1928 (45 Stat. 1057),  
17 the Colorado River Basin Project Act of September 30, 1968 (82  
18 Stat. 885), as amended, hereinafter referred to collectively as the  
19 "Federal Reclamation Laws," and the various authorities and re-  
20 sponsibilities of the Secretary of the Interior in relation to  
21 Indians and Indian Tribes, as contained in Title 25 U.S.C. and 43  
22 U.S.C. § 1457, among THE UNITED STATES OF AMERICA, acting through  
23 the Secretary of the Interior, the CENTRAL ARIZONA WATER  
24 CONSERVATION DISTRICT, hereinafter referred to as "CAWCD," a multi-  
25 county water conservation district organized under the laws of  
26 Arizona, with its principal place of business in Phoenix, Arizona,  
and the CITY OF TEMPE, Arizona, hereinafter referred to as the  
"City," with its principal place of business at 31 East 5th Street,  
Tempe, Arizona;

1 WITNESSETH, THAT:

2 ARTICLE 2  
3 Explanatory Recitals

4 2. WHEREAS, the Colorado River Basin Project Act  
5 provides, among other things, that for the purposes of furnishing  
6 irrigation and municipal and industrial water supplies to water  
7 deficient areas of Arizona and western New Mexico through direct  
8 diversion or exchange of water, control of floods, conservation and  
9 development of fish and wildlife resources, enhancement of recrea-  
10 tion opportunities, and for other purposes, the Secretary of the  
11 Interior shall construct, operate, and maintain the Central Arizona  
12 Project; and

13 WHEREAS, pursuant to the provisions of Arizona Revised  
14 Statutes §§ 48-3701, et seq., CAWCD has been organized with the  
15 power to enter into a contract or contracts with the Secretary of  
16 the Interior to accomplish the purposes of Arizona Revised Sta-  
17 tutes, §§ 48-3701, et seq.; and

18 WHEREAS, pursuant to Section 304(b)(1) of the Colorado  
19 River Basin Project Act, the Secretary of the Interior has deter-  
20 mined that it is necessary to effect repayment of the cost of con-  
21 structing the Central Arizona Project pursuant to a master contract  
22 and that the United States, together with CAWCD, shall be a party  
23 to contracts that are in conformity with and subsidiary to the  
24 master contract; and

25 WHEREAS, the United States and CAWCD entered into Con-  
26 tract No. 14-06-W-245 dated December 15, 1972, which was amended on

1 December 1, 1988, hereinafter referred to as the "Repayment  
2 Contract," a copy of which is attached hereto as Exhibit "A" and by  
3 this reference made a part hereof, whereby CAWCD agrees to repay to  
4 the United States the reimbursable costs of the Central Arizona  
5 Project allocated to CAWCD; and

6 WHEREAS, the City has entered into a water service  
7 subcontract with the United States and CAWCD for municipal and  
8 industrial water service from water supplies available from the  
9 Central Arizona Project, Contract No. 5-07-30-W0061; and

10 WHEREAS, the United States, the State of Arizona, the  
11 Salt River Pima-Maricopa Indian Community, the Salt River Valley  
12 Water Users' Association, the Salt River Project Agricultural  
13 Improvement and Power District, the Roosevelt Water Conservation  
14 District, the Roosevelt Irrigation District, the Cities of Phoenix,  
15 Scottsdale, Glendale, Mesa, Tempe, and Chandler and the Town of  
16 Gilbert, Arizona, and CAWCD have agreed to permanently settle the  
17 water rights of the Salt River Pima-Maricopa Indian Community and  
18 its members, to finally resolve pending litigation on water rights  
19 and damage claims, and to seek funding for implementation of the  
20 settlement; and

21 WHEREAS, the United States, acting through the Secretary  
22 of the Interior, has both a trust and fiduciary responsibility to  
23 make the Salt River Pima-Maricopa Indian reservation a permanent  
24 Tribal homeland for the Salt River Pima-Maricopa Indian Community;  
25 and

26 . . .

1           WHEREAS, as part of the water rights settlement with the  
2 Salt River Pima-Maricopa Indian Community, the United States is  
3 required to contract with the City for the delivery through Central  
4 Arizona Project facilities of not to exceed one hundred (100) acre-  
5 feet per year of Colorado River water which was not included in the  
6 determination of water supplies available to the Central Arizona  
7 Project, plus certain additional amounts of Central Arizona Project  
8 water to be made available each year by the Roosevelt Water  
9 Conservation District or the Secretary of the Interior from Central  
10 Arizona Project water supplies otherwise available for agricultural  
11 use;

12           NOW, THEREFORE, in consideration of the mutual covenants  
13 herein contained, the parties hereto agree as follows:

14                           ARTICLE 3  
15                           Definitions

16           3.   For purposes of this Contract:

17                   (a) "Agricultural water" shall mean water made  
18 available from the Central Arizona Project for the commercial pro-  
19 duction of agricultural crops or livestock, including domestic use  
20 incidental thereto, on tracts of land operated in units of more  
21 than five acres.

22                   (b) "CAWCD's service area" shall mean the area now  
23 included within the Central Arizona Water Conservation District,  
24 consisting of Maricopa, Pinal, and Pima Counties, Arizona, and such  
25 other counties as may hereafter become part of the District,

26           . . .

1 exclusive of any Indian reservation land lying wholly or partly  
2 within said Counties.

3 (c) "Central Arizona Project" or "CAP" or "project"  
4 shall mean the project and works authorized by Section 301(a) of  
5 the Colorado River Basin Project Act and constructed by the United  
6 States pursuant to the provisions of said Act.

7 (d) "Cities" shall mean the City of Chandler, the  
8 City of Glendale, the City of Scottsdale, the City of Tempe, the  
9 City of Mesa, the City of Phoenix, and the Town of Gilbert.

10 (e) "Colorado River water" shall mean that Colorado  
11 River mainstream water to be delivered to the City under this  
12 Contract which has a Colorado River priority pre-dating September  
13 30, 1968.

14 (f) "Contracting Officer" shall mean the Secretary  
15 or his authorized designee acting on his behalf.

16 (g) "Distribution works" shall mean those facil-  
17 ities constructed or used for the purpose of distributing water to  
18 or within the City's service area after said water has been trans-  
19 ported through the water supply system to the City's project  
20 turnout(s).

21 (h) "Ground water recharge" shall mean the recharge  
22 of water pursuant to title 45, chapter 2, article 13, Arizona  
23 Revised Statutes, or the underground storage and recovery of water  
24 pursuant to title 45, chapter 3, Arizona Revised Statutes, or as  
25 said statutes may hereafter be amended or revised.

26 . . .

1 (i) "Miscellaneous water" shall mean water made  
2 available from the Central Arizona Project, or by exchange for such  
3 water, for recreational and fish and wildlife purposes at other  
4 than project facilities, and which has a lesser priority of use  
5 than agricultural water.

6 (j) "Municipal and industrial water," hereinafter  
7 sometimes referred to as "M&I water," shall mean water made avail-  
8 able from the Central Arizona Project other than agricultural water  
9 and miscellaneous water.

10 (k) "Notice of completion" shall mean the notice  
11 which the Contracting Officer issues to CAWCD to announce the sub-  
12 stantial completion of the water supply system, or of those  
13 features of the project which include or comprise the water supply  
14 system, or of the entire project if constructed concurrently,  
15 thereby initiating payments therefor allocated to CAWCD.

16 (l) "OM&R" shall mean the care, operation, mainte-  
17 nance, and replacement of project works.

18 (m) "Operating Agency" shall mean the entity or  
19 entities authorized to assume OM&R responsibility of transferred  
20 works and approved for that purpose by the Contracting Officer.

21 (n) "Assignment Water" shall mean that water to be  
22 delivered to the City under this Contract which is made available  
23 to the City by the Roosevelt Water Conservation District ("RWCD")  
24 or the Secretary of the Interior pursuant to the Assignment, dated  
25 as of February 12, 1988, among the United States, CAWCD, RWCD,  
26 . . . .



1 and the Cities. A copy of the Assignment is attached hereto as  
2 Exhibit "B" and by this reference made a part hereof.

3 (o) "Project works" shall mean the principal works  
4 described in Section 301(a) of the Colorado River Basin Project  
5 Act, and appurtenances thereto, or as modified pursuant to the  
6 Repayment Contract, together with lands, interests in lands, and  
7 rights-of-way for such works and appurtenances.

8 (p) "Return flow" shall mean all agricultural, M&I,  
9 and miscellaneous waste water, seepage, and ground water which  
10 originates or results from Colorado River water or Assignment Water  
11 as defined herein, but shall not include any water delivered  
12 through the project works for ground water recharge purposes.

13 (q) "Secretary" shall mean the Secretary of the  
14 Interior of the United States or his duly authorized  
15 representative.

16 (r) "Settlement Agreement" shall mean the Agreement  
17 dated as of February 12, 1988, among the United States of America,  
18 the State of Arizona, the Salt River Pima-Maricopa Indian  
19 Community, the Salt River Project Agricultural Improvement and  
20 Power District, the Salt River Valley Water Users' Association,  
21 RWCD, the Roosevelt Irrigation District, the Cities, and CAWCD.

22 (s) "Subcontractor" shall mean any irrigation  
23 district, municipality, individual, or any other entity which  
24 enters into a water service subcontract with the United States and  
25 CAWCD in furtherance of the provisions of the Colorado River Basin  
26 Project Act.

1 (t) "Time of shortage" shall mean a calendar year  
2 for which the Secretary determines that a shortage exists pursuant  
3 to Section 301(b) of the Colorado River Basin Project Act, such  
4 that there is not sufficient water available for delivery from the  
5 Central Arizona Project in that year (after reduction in considera-  
6 tion of anticipated losses due to evaporation and seepage estimated  
7 to occur during transportation of such water through the water  
8 supply system and exclusive of "Colorado River water" as defined  
9 herein) to meet fully the entitlements of Indian contractors and  
10 non-Indian municipal and industrial subcontractors of Central  
11 Arizona Project water supplies.

12 (u) "Transferred works" shall mean such features of  
13 the project or such facilities of the water supply system as to  
14 which OM&R responsibility is transferred from the United States to  
15 the Operating Agency.

16 (v) "Water supply system" shall mean the Navajo  
17 Project, Havasu Pumping Plant, the Granite Reef, Salt-Gila, and  
18 Tucson aqueducts and associated pumping plants and appurtenant  
19 works, but not including Tucson Terminal Storage or any  
20 distribution works.

21 (w) "Year" shall mean the period between January 1  
22 through the next succeeding December 31.

23 ARTICLE 4  
24 Term

25 4. This Contract shall become effective upon its execu-  
26 tion by the parties hereto and its term shall be perpetual.

ARTICLE 5  
Delivery of Water

5. (a) The United States shall obtain rights to 22,000 acre-feet of annual consumptive use of mainstream Colorado River water in Arizona with a contractual priority pre-dating September 30, 1968, and which was not included in the determination of the water supplies available to the Central Arizona Project. The Secretary shall make such Colorado River water available for delivery as provided herein.

(b) Except as provided in Article 8 hereof, commencing with the year in which the Secretary issues notice of completion or the enforceability date of the Settlement Agreement, whichever is later, and for each year thereafter, the City shall be entitled to Colorado River water and Assignment Water in amounts not exceeding the following:

(i) Colorado River water -- 100 acre-feet; and  
(ii) Assignment Water made available to the City by RWCD pursuant to Paragraph 2 of the Assignment attached hereto as Exhibit "B" -- 23 acre-feet; or

(iii) Assignment Water made available to the City by the Secretary pursuant to Paragraph 3 of the Assignment attached hereto as Exhibit "B" -- 14 acre-feet.

(c) The City's annual entitlement to Colorado River water under Subarticle 5(b)(i) hereof shall be deemed to be met if initially made available for delivery at CAWCD's project delivery point on the Colorado River, and shall be subject to reduction on

1 account of losses by reason of evaporation and seepage occurring  
2 during the transportation of such water through the water supply  
3 system to the City's project delivery point. Said losses occurring  
4 on the City's Colorado River water supplies shall be determined by  
5 the Contracting Officer or the Operating Agency, but shall not  
6 exceed the City's pro rata share of losses as compared to losses  
7 due to evaporation and seepage occurring during transportation  
8 through the water supply system of all water supplies delivered  
9 during a year.

10 (d) The City's entitlement to Assignment Water  
11 under Subparagraphs 5(b)(ii) and 5(b)(iii) hereof, and its rights  
12 and obligations with respect to such Assignment Water, shall be  
13 subject to the terms and conditions of the Assignment attached  
14 hereto as Exhibit "B".

15 (e) The City's entitlement to Colorado River water  
16 and Assignment Water under this Contract shall be in addition to  
17 the City's entitlement to Central Arizona Project water for muni-  
18 cipal and industrial use under the City's Central Arizona Project  
19 M&I water service subcontract (Contract No. 5-07-30-W0061).

20 (f) During such periods as it operates and main-  
21 tains the Central Arizona Project, the United States shall deliver  
22 Colorado River water and Assignment Water to which the City is  
23 entitled under this Contract through the water supply system.  
24 Subject to the provisions of Subarticles 5(c) and 5(d) hereof, the  
25 United States shall use all reasonable diligence to make available  
26 to the City the quantity of Colorado River water and Assignment

1 Water specified in the schedule submitted by the City in accordance  
2 with Article 6 hereof. After transfer of OM&R responsibility to  
3 the Operating Agency, the United States shall make deliveries of  
4 Colorado River water and Assignment Water to the Operating Agency  
5 which shall make subsequent delivery of such water to the City as  
6 provided herein.

7 (g) The obligation of the United States and the  
8 Operating Agency to deliver Colorado River water and Assignment  
9 Water to the City under this Contract is subject to:

10 (i) The availability of such water for use in  
11 Arizona under the provisions of the Colorado River Compact, exe-  
12 cuted November 24, 1922; the Boulder Canyon Project Act, 45 Stat.  
13 1057, dated December 21, 1928; the Colorado River Basin Project  
14 Act, 82 Stat. 885, dated September 30, 1968, the contract between  
15 the United States and the State of Arizona dated February 9, 1944,  
16 the Opinion of the Supreme Court of the United States in the case  
17 of Arizona v. California et al., rendered June 3, 1963, 373 U.S.  
18 546, and the Decree of that court in said case, entered March 9,  
19 1964, 376 U.S. 340, as amended on February 28, 1966, at 383 U.S.  
20 268, and supplemented on January 9, 1979, at 439 U.S. 419, or as  
21 hereafter modified;

22 (ii) Executive A, Seventy-Eighth Congress,  
23 Second Session, a treaty between the United States of America and  
24 the United Mexican States, signed at Washington on February 3,  
25 1944, relating to the utilization of the waters of the Colorado and  
26 Tijuana Rivers and of the Rio Grande from Fort Quitman, Texas, to

1 the Gulf of Mexico, and Executive H, Seventy-eighth Congress,  
2 Second Session, a protocol signed at Washington on November 14,  
3 1944, supplementary to the Treaty, all hereinafter referred to as  
4 the Mexican Water Treaty;

5 (iii) The express understanding and agreement by  
6 the City that this Contract is subject to the condition that Hoover  
7 Dam and Lake Mead shall be used: first, for river regulation,  
8 improvement of navigation, and flood control; second, for irriga-  
9 tion and domestic uses and satisfaction of present perfected rights  
10 in pursuance of Article VIII of the Colorado River Compact approved  
11 by Section 13(a) of the Boulder Canyon Project Act; and third, for  
12 power; and furthermore, that this Contract is made upon the express  
13 condition and with the express covenant that all rights hereunder  
14 shall be subject to and controlled by the Colorado River Compact  
15 and that the United States and City shall observe and be subject to  
16 and controlled by said Colorado River Compact and Boulder Canyon  
17 Project Act in the construction, management, and operation of  
18 Hoover Dam, Lake Mead, canals and other works, and the storage,  
19 diversion, delivery, and use of water to be delivered to City here-  
20 under; and

21 (iv) The right of the United States or the  
22 Operating Agency temporarily to discontinue or reduce the amount of  
23 water to be delivered hereunder whenever such discontinuance or  
24 reduction is made necessary for purposes of investigations, in-  
25 spections, replacements, maintenance, or repairs to any works what-  
26 soever affecting, utilized or, in the opinion of the Secretary or

1 the Operating Agency, necessary for delivery of water hereunder, it  
2 being understood that so far as feasible the United States or the  
3 Operating Agency will (i) do so during periods of low water demands  
4 and (ii) give reasonable notice in advance of such temporary  
5 discontinuance or reduction.

6 (h) Subject to the terms and conditions herein, the  
7 United States and the Operating Agency shall be obligated to  
8 deliver Colorado River water and Assignment Water to the City with-  
9 out regard as to whether or not the Salt River Pima-Maricopa Indian  
10 Community exercises its right to use any or all of the exchange  
11 water referred to in Paragraph 12 of the Settlement Agreement.

12 (i) Delivery and use of Colorado River water and  
13 Assignment Water under this Contract is further conditioned on the  
14 following, and the City hereby agrees that:

15 (i) All uses of Colorado River water,  
16 Assignment Water and return flow shall be consistent with Arizona  
17 water law unless such law is inconsistent with the Congressional  
18 directives applicable to the Central Arizona Project.

19 (ii) The system or systems through which  
20 Colorado River water and Assignment Water for municipal and  
21 industrial (including ground water recharge) purposes is conveyed  
22 after delivery to the City shall consist of pipelines, canals,  
23 distribution systems, or other conduits provided and maintained  
24 with linings adequate in the Contracting Officer's judgment to  
25 prevent excessive conveyance losses.

26 . . .

1                   (iii) The City shall not pump, or within its  
2 legal authority, permit others to pump ground water from within the  
3 exterior boundaries of the City's service area, which has been  
4 delineated on a map filed with the Contractor and approved by the  
5 Contractor and the Contracting Officer, for use outside of said  
6 service area unless such pumping is permitted under Title 45,  
7 Chapter 2, Arizona Revised Statutes, as it may be amended from time  
8 to time, and the Contracting Officer, CAWCD, and the City shall  
9 agree, or shall have previously agreed, that a surplus of ground  
10 water exists and drainage is or was required; Provided, however,  
11 That such pumping may be approved by the Contracting Officer and  
12 CAWCD, and approval shall not be unreasonably withheld, if such  
13 pumping is in accord with the Colorado River Basin Project Act and  
14 upon submittal by the City of a written certification from the  
15 Arizona Department of Water Resources or its successor agency that  
16 the pumping and transportation of ground water is in accord with  
17 Title 45, Chapter 2, Arizona Revised Statutes, as it may be amended  
18 from time to time.

19                   (iv) The City shall not sell or otherwise  
20 dispose of or permit the sale or other disposition of Colorado  
21 River water and Assignment Water for use outside of Maricopa,  
22 Pinal, and Pima Counties; Provided, however, That this does not  
23 prohibit exchanges of Colorado River water and Assignment Water  
24 covered by separate agreements; and Provided, further, That this  
25 does not prohibit effluent exchanges with Indian tribes pursuant to  
26 . . . .



1 Article 6.2 of the City's Central Arizona Project M&I water service  
2 subcontract (Contract No. 5-07-30-W0061).

3 (j) (i) Colorado River water and Assignment Water  
4 scheduled for delivery in any year under this contract may be used  
5 by the City or resold or exchanged by the City pursuant to appro-  
6 priate agreements approved by the Contracting Officer and CAWCD.  
7 If said water is resold or exchanged by the Contractor for an  
8 amount in excess of that which the City is obligated to pay under  
9 this Contract, the excess amount shall be paid forthwith by the  
10 City to CAWCD for application against the CAWCD's repayment obliga-  
11 tion to the United States; Provided, however, That the Contractor  
12 shall be entitled to recover actual costs of transportation,  
13 treatment, and distribution, including but not limited to OM&R  
14 costs.

15 (ii) Colorado River water and Assignment Water  
16 scheduled for delivery in any year under this Contract that cannot  
17 be used, resold, or exchanged by the City may be made available by  
18 the Contracting Officer or the Operating Agency to other users. If  
19 such water is sold to or exchanged with other users, the City shall  
20 be relieved of its payments hereunder only to the extent of the  
21 amount paid to the Contracting Officer and the Operating Agency by  
22 such other users, but not to exceed the amount the City is  
23 obligated to pay under this Contract for said water.

24 (iii) In the event the City, the Contracting  
25 Officer, or the Operating Agency is unable to sell any portion of  
26 the Colorado River water or Assignment Water scheduled for delivery

1 by the City but not required by the City in any year, the City  
2 shall be relieved of the pumping energy portion of the OM&R charges  
3 associated with the undelivered water as determined by the  
4 Contracting Officer or the Operating Agency.

5 (k) The City shall have the right to use Colorado  
6 River water and Assignment Water received under this Contract for  
7 any purpose consistent with Arizona law, including ground water  
8 recharge.

9 ARTICLE 6  
10 Procedure for Ordering Water

11 6. At least six months prior to the delivery of  
12 Colorado River water and Assignment Water to the City under this  
13 Contract, the Contracting Officer or the Operating Agency shall  
14 issue a written notice of availability of such water to the City.  
15 The City will, in accordance with the procedures hereinafter set  
16 out, submit written schedules to the Contracting Officer and the  
17 Operating Agency showing the quantities of (i) Colorado River water  
18 and (ii) Assignment Water requested for delivery. The City shall  
19 submit a schedule which requests the delivery of all Assignment  
20 Water available to it. If the first notice of availability of  
21 water is issued to the City by the Contracting Officer or the  
22 Operating Agency prior to June 1 of any year, the first schedule  
23 for the balance of said year shall be submitted to the Contracting  
24 Officer and the Operating Agency within 30 days after the City's  
25 receipt of such notice. If such notice is issued after June 1 of  
26 any year, the first schedule shall be submitted to the Contracting

1 Officer and the Operating Agency within 30 days after the City's  
2 receipt of such notice and shall cover the balance of such year and  
3 the next succeeding year. Thereafter, the amounts, times, and  
4 rates of delivery of water to the City during any year shall be in  
5 accordance with a water delivery schedule for that year, such sche-  
6 dule to be determined in the following manner:

7 (a) On or before June 1 of each year, the Con-  
8 tracting Officer shall announce (i) the amount of Colorado River  
9 water and (ii) the amount of Assignment Water available for  
10 delivery during the following year in a written notice to the  
11 Operating Agency and the City.

12 (b) On or before October 1 of each year, the City  
13 shall submit in writing to the Operating Agency and the Contracting  
14 Officer a water delivery schedule indicating the amounts of  
15 (i) Colorado River water and (ii) Assignment Water desired by the  
16 City during each month of the following year along with a pre-  
17 liminary schedule of water desired for the succeeding 2 years. The  
18 City shall schedule for delivery each year all Assignment Water  
19 available to it for delivery during that year.

20 (c) Upon receipt of such schedule, the Contracting  
21 Officer and the Operating Agency shall review it and, after con-  
22 sultation with the City, shall make only such modifications to the  
23 schedule as are necessary to ensure that the amounts, times, and  
24 rates of delivery to the City are consistent with the delivery  
25 capability of the project, considering, among other things, the  
26 availability of water and the delivery schedules of all subcon-

1 tractors of Central Arizona Project water service; Provided, That  
2 this provision shall not be construed to reduce annual deliveries  
3 to the City.

4 (d) On or before November 15 of each year, the  
5 Contracting Officer or the Operating Agency shall determine and  
6 furnish to the City the water delivery schedule for the next  
7 succeeding year which shall show the amounts of (i) Colorado River  
8 water and (ii) Assignment Water to be delivered to the City during  
9 each month of that year.

10 (e) The monthly water delivery schedules may be  
11 amended by the Contracting Officer or the Operating Agency upon the  
12 City's written request. Proposed amendments shall be submitted by  
13 the City within a reasonable time before the desired change is to  
14 become effective, and shall be subject to review and modification  
15 by the Contracting Officer or the Operating Agency in like manner  
16 as the schedule itself.

17 (f) In no event shall the Contracting Officer or  
18 the Operating Agency be required to deliver in any one month (i) an  
19 amount of Colorado River water greater than eleven percent (11%) of  
20 the City's maximum annual entitlement to Colorado River water under  
21 Subarticle 5(b)(i) of this Contract or (ii) an amount of Assignment  
22 Water greater than eleven percent (11%) of the City's maximum  
23 annual entitlement to Assignment Water under Subarticle 5(b)(ii) or  
24 5(b)(iii) of this Contract; Provided, however, That the Contracting  
25 Officer or the Operating Agency may deliver a greater percentage of  
26 such water in any month if such increased delivery is compatible

1 with the overall delivery of Central Arizona Project water to CAP  
2 subcontractors as determined by the Contracting Officer and the  
3 Operating Agency, and if the City agrees to accept such increased  
4 deliveries.

5 ARTICLE 7  
6 Points of Delivery--Measurement and  
7 Responsibility for Distribution of Water

7 (a) All water to be furnished to the City pursuant  
8 to this Contract shall be delivered at turnouts to be constructed  
9 by the United States at such point(s) on the water supply system as  
10 may be agreed upon in writing by the Contracting Officer and CAWCD,  
11 after consultation with the City.

12 (b) Unless the United States and the City agree by  
13 contract to the contrary, the City shall construct and install, at  
14 its sole cost and expense, connection facilities required to take  
15 and convey such water from the turnouts to the City's service  
16 area. The City shall furnish, for approval of the Contracting  
17 Officer, drawings showing the construction to be performed by the  
18 Contractor within the water supply system right-of-way six months  
19 before starting said construction. The facilities may be in-  
20 stalled, operated, and maintained on the water supply system right-  
21 of-way subject to such reasonable restrictions and regulations as  
22 to type, location, method of installation, operation, and  
23 maintenance as may be prescribed by the Contracting Officer.

24 (c) All water delivered to the City pursuant to  
25 this Contract shall be measured with equipment furnished and  
26 installed by the United States and operated and maintained by the

1 United States or by the Operating Agency. Upon the request of the  
2 City or the Operating Agency, the accuracy of such measurements  
3 shall be investigated by the Contracting Officer or by the Operat-  
4 ing Agency and the City, and any errors which may be mutually  
5 determined to have occurred therein shall be adjusted; Provided,  
6 That in the event the parties cannot agree on the required adjust-  
7 ment, the Contracting Officer's determination shall be conclusive.

8 (d) Neither the United States nor the Operating  
9 Agency shall be responsible for the control, carriage, handling,  
10 use, disposal, or distribution of water beyond the delivery  
11 point(s) agreed to pursuant to Subarticle 7(a). The City shall  
12 hold the United States and the Operating Agency harmless on account  
13 of damage or claim of damage of any nature whatsoever for which  
14 there is legal responsibility, including property damage, personal  
15 injury, or death arising out of or connected with the City's  
16 control, carriage, handling, use, disposal, or distribution of  
17 water beyond said delivery point(s).

18 (e) In addition to the right of the United States  
19 under Subarticle 8.3(a)(iv) of the Repayment Contract temporarily  
20 to discontinue or reduce the amount of water to be delivered  
21 through the Central Arizona Project, the United States or the  
22 Operating Agency may, after consultation with the City, temporarily  
23 discontinue or reduce the quantity of water to be furnished to the  
24 City as herein provided for the purpose of investigation, inspec-  
25 tion, maintenance, repair, or replacement of any CAP facilities or  
26 any part thereof necessary for the furnishing of water to the City

1 under this Contract, but so far as feasible the United States or  
2 the Operating Agency shall coordinate any such discontinuance or  
3 reduction with the City and shall give the City due notice in  
4 advance of such temporary discontinuance or reduction, except in  
5 case of emergency, in which case no notice need be given. Neither  
6 the United States, its officers agents, and employees, nor the  
7 Operating Agency, its officers, agents, and employees, shall be  
8 liable for damages when, for any reason whatsoever, any such  
9 temporary discontinuance or reduction in delivery of water  
10 occurs. If any such discontinuance or temporary reduction results  
11 in deliveries to the City of less water than what has been paid for  
12 in advance, the City shall be entitled to be reimbursed for the  
13 appropriate proportion of advance payments of OM&R charges prior to  
14 the date of the City's next payment of OM&R charges or the City may  
15 be given credit toward the next payment of OM&R charges if the City  
16 should so desire.

17 ARTICLE 8  
18 Priority in Case of Shortage

19 8. (a) Subject to the provisions of Section 304(e) of  
20 the Colorado River Basin Project Act, in the event of a shortage of  
21 the water supplies available to the Central Arizona Project, as  
22 determined by the Contracting Officer after consultation with  
23 CAWCD, Assignment Water furnished to the City under this Contract  
24 shall be subject to reduction in the same manner and to the same  
25 extent as agricultural water under Central Arizona Project  
26 agricultural water service subcontracts.

(b) In a time of shortage, the City's entitlement to Colorado River water under Subarticle 5(b)(i) of this Contract shall be determined by the following formula:

$$\begin{array}{lcl} \text{City's entitlement to} & & \\ \text{Colorado River water} & = & [(X+Y) \cdot (A+B)/(C+D)] - \\ \text{in a time of shortage} & & [(X/D) \cdot A]^* \end{array}$$

X = the City's entitlement to Central Arizona Project water for M&I water use under Article 4.12 of Contract No. 5-07-30-W0061, as the same may be amended or supplemented from time to time;

Y = 118 acre-feet;

A = the total amount of water available from the Central Arizona Project for non-Indian M&I water use (after reduction on account of losses due to evaporation and seepage estimated to occur during transportation of such water through the water supply system and exclusive of "Colorado River water" as defined herein), as determined by the Contracting Officer in accordance with the method outlined in the Record of Decision of the Secretary published in the Federal Register on March 24, 1983;

B = the total amount of Colorado River water available to the Cities pursuant to this Contract with the City of Tempe and like contracts with the other Cities (after reduction on account of losses due to evaporation and seepage estimated to occur during transportation of such water through the water supply system);

C = 26,000 acre-feet.

D = the sum of all non-Indian municipal and industrial subcontractors' entitlements to Central Arizona Project water for M&I water use under Article 4.12 of all non-Indian CAP municipal and industrial subcontracts, as the same may be amended or supplemented from time to time;

\* It is the intent of the parties that this calculation be performed in a manner which is consistent with the method of



1 calculation exemplified in Tables 1 and 2 attached hereto as  
2 Exhibit "C".

3 (c) Notwithstanding the provisions of Subarticle  
4 5(c) of this Contract, the City's entitlement to Colorado River  
5 water, as determined in accordance with the formula set forth in  
6 Subarticle 8(b) hereof, shall be made available to the City at the  
7 City's project turnout(s).

8 (d) In a time of shortage, any Colorado River water  
9 available from the 22,000 acre-feet to be obtained by the United  
10 States pursuant to Subarticle 5(a) hereof in excess of that neces-  
11 sary to satisfy the entitlement of the City under Subarticle 8(b)  
12 of this Contract and the entitlements of the other Cities under  
13 Subarticle 8(b) of like contracts with such Cities shall be made  
14 available by the Secretary for delivery to non-Indian CAP municipal  
15 and industrial subcontractors other than the Cities pursuant to the  
16 Central Arizona Project M&I water service subcontracts with such  
17 subcontractors, pro rata in proportion to each such subcontractor's  
18 entitlement to Central Arizona Project water for M&I use under such  
19 subcontractor's Central Arizona Project M&I water service sub-  
20 contract. The manner in which this Subarticle 8(d) is intended to  
21 operate is illustrated by Tables 1 and 2 attached hereto as Exhibit  
22 "C".

23 ARTICLE 9  
24 Payments

25 9. (a) Subject to the provisions of Article 11 hereof,  
26 the City shall pay in advance for CAP OM&R costs estimated to be

1 incurred by the United States or the Operating Agency in delivering  
2 Colorado River water and Assignment Water to the City pursuant to  
3 this Contract. At least 6 months prior to the first delivery of  
4 such water, or as soon thereafter as is practicable, the  
5 Contracting Officer or the Operating Agency shall furnish the City  
6 with an estimate of the City's share of OM&R costs to the end of  
7 the initial year of water delivery and an estimate of such costs  
8 for the following year. Within a reasonable time of the receipt of  
9 said estimates, as determined by the Contracting Officer or the  
10 Operating Agency, but prior to the delivery of water, the City  
11 shall advance to the Contracting Officer or the Operating Agency  
12 its share of such estimated costs to the end of the initial month  
13 of water delivery and without further notice or demand shall on or  
14 before the first day of each succeeding month of the initial year  
15 of water delivery and the following year advance to the Contracting  
16 Officer or the Operating Agency in equal monthly installments the  
17 City's share of such estimated costs. Advances of monthly payments  
18 for each subsequent year shall be made by the City to the  
19 Contracting Officer or the Operating Agency on the basis of annual  
20 estimates to be furnished by the Contracting Officer or the  
21 Operating Agency on or before June 1 preceding each said subsequent  
22 year, and the advances of payments for said estimated costs shall  
23 be due and payable in equal monthly payments on or before the first  
24 day of each month of the subsequent year. Differences between  
25 actual OM&R costs and estimated OM&R costs shall be adjusted in the  
26 next succeeding annual estimates; Provided, however, That if in the

1 opinion of the Contracting Officer or the Operating Agency the  
2 amount of any annual OM&R estimate is likely to be insufficient to  
3 cover the above-mentioned costs during such period, the Contracting  
4 Officer or the Operating Agency may increase the annual estimate of  
5 the City's OM&R costs by written notice thereof to the City, and  
6 the City shall forthwith increase its remaining monthly payments in  
7 such year to the Contracting Officer or the Operating Agency by the  
8 amount necessary to cover the estimated insufficiency. All esti-  
9 mates of OM&R costs shall be accompanied by data and computations  
10 relied on by the Contracting Officer or the Operating Agency in  
11 determining the amounts of the estimated OM&R costs and shall be  
12 subject to joint review by the City and the Contracting Officer or  
13 the Operating Agency.

14 (b) Other than as provided for in Exhibit "B"  
15 hereto with respect to Assignment Water, the City shall not be  
16 required to pay any water service capital charge(s) with respect to  
17 Colorado River water or Assignment Water to which the City is  
18 entitled under this Contract.

19 (c) Payment of all OM&R charges becoming due here-  
20 under prior to or on the dates stipulated in Subarticle 9(a) hereof  
21 is a condition precedent to receiving water under this Contract.

22 (d) All payments to be made to the Operating Agency  
23 or the United States under Subarticle 9(a) hereof shall be made by  
24 the City as such payments fall due from revenues legally available  
25 to the City for such payment from the sale of water to its water  
26 users and from any and all other sources which might be legally

1 available; Provided, That no portion of the general taxing  
2 authority of the City, nor its general funds, nor funds from ad  
3 valorem taxes are obligated by the provisions of this Contract, nor  
4 shall such sources be liable for any payments, contributions, or  
5 other costs pursuant to this Contract, or to satisfy any obligation  
6 hereunder unless duly and lawfully allocated and budgeted for such  
7 purpose by the City for the applicable budget year; and Provided,  
8 further, That no portion of this Contract shall ever be construed  
9 to create an obligation superior in lien to or on a parity with the  
10 Cities' revenue bonds now or hereafter issued. The City shall levy  
11 and impose such necessary water service charges and rates and use  
12 all the authority and resources available to it to collect all such  
13 necessary water service charges and rates in order that the City  
14 may meet its obligations hereunder and make in full all payments  
15 required under this Contract on or before the date such payments  
16 become due.

17 ARTICLE 10  
18 Loss of Entitlement

19 10. The City shall have no right to delivery of Colorado  
20 River water or Assignment Water under this Contract during any  
21 period in which the City may be in arrears in the payment of any  
22 charges due the United States or the Operating Agency. The Con-  
23 tracting Officer or the Operating Agency may sell to another entity  
24 any water determined to be available under the City's entitlement  
25 for which payment is in arrears; Provided, however, That, except as  
26 provided to the contrary in Exhibit "B" hereto, the City may regain

1 the right to use any unsold portion of the water determined to be  
2 available under the City's original entitlement upon (i) payment of  
3 all delinquent charges plus any difference between the contractual  
4 obligation and the price received in the sale of the water by the  
5 Contracting Officer or Operating Agency and (ii) payment of charges  
6 for the current period.

7 ARTICLE 11  
8 Refusal to Accept Delivery

9 11. In the event the City fails or refuses in any year  
10 to accept delivery of the quantity of water available for delivery  
11 to and required to be scheduled by it pursuant to this Contract, or  
12 in the event the City in any year fails to submit a schedule for  
13 delivery as provided in Article 6 hereof, said failure or refusal  
14 shall not relieve the City of its obligation to make the payments  
15 required in this Contract.

16 ARTICLE 12  
17 Charges for Delinquent Payments

18 12. (a) The City shall be subject to interest,  
19 administrative, and penalty charges on delinquent installments or  
20 payments. When a payment is not received by the due date, the City  
21 shall pay an interest charge for each day the payment is delinquent  
22 beyond the due date. When a payment becomes 60 days delinquent,  
23 the City shall pay an administrative charge to cover additional  
24 costs of billing and processing the delinquent payment. When a  
25 payment is delinquent 90 days or more, the City shall pay an  
26 additional penalty charge of 6 percent per year for each day the  
payment is delinquent beyond the due date. Further, the City shall

1 pay any fees incurred for debt collection services associated with  
2 a delinquent payment.

3 (b) The interest charge rate shall be the greater  
4 of the rate prescribed quarterly in the Federal Register by the  
5 Department of the Treasury for application to overdue payments, or  
6 the interest rate of 0.5 percent per month prescribed by Section 6  
7 of the Reclamation Project Act of 1939 (Public Law 76-260). The  
8 interest charge rate shall be determined as of the due date and  
9 remain fixed for the duration of the delinquent period.

10 (c) When a partial payment on a delinquent account  
11 is received, the amount received shall be applied, first to the  
12 penalty, second to the administrative charges, third to the accrued  
13 interest, and finally to the overdue payment.

14 ARTICLE 13  
15 Secretarial Control of Return Flow

16 13. (a) The Secretary reserves the right to capture all  
17 return flow flowing from the exterior boundaries of CAWCD's service  
18 area as a source of supply and for distribution to and use of the  
19 Central Arizona Project to the fullest extent practicable. The  
20 Secretary also reserves the right to capture for CAP use return  
21 flow which originates or results from water contracted for from the  
22 Central Arizona Project within the boundaries of CAWCD's service  
23 area if, in his judgment, such return flow is not being put to a  
24 beneficial use. The City may recapture and reuse or sell its  
25 return flow; Provided, however, That such return flow may not be  
26 sold for use outside Maricopa, Pinal, and Pima Counties; and

1 Provided, further, That this does not prohibit effluent exchanges  
2 with Indian tribes pursuant to Article 6.2 of the City's Central  
3 Arizona Project M&I water service subcontract (Contract No. 5-07-  
4 30-W0061). The City shall, at least 60 days in advance of any  
5 proposed sale of such water, furnish the following information in  
6 writing to the Contracting Officer and CAWCD:

7 (i) The name and address of the prospective  
8 buyer.

9 (ii) The location and proposed use of the  
10 return flow.

11 (iii) The price to be charged for the return  
12 flow.

13 (b) The price charged for the return flow may cover  
14 the cost incurred by the City for Colorado River water and  
15 Assignment Water plus the cost required to make the return flow  
16 usable. If the price received for the return flow is greater than  
17 the costs incurred by the City, as described above, the excess  
18 amount shall be forthwith paid by the City to the CAWCD for appli-  
19 cation against CAWCD's repayment obligation to the United States.  
20 Costs required to make return flow usable shall include but not be  
21 limited to capital costs and OM&R costs including transportation,  
22 treatment, and distribution, and the portion thereof which may be  
23 retained by the City shall be subject to the advance approval of  
24 CAWCD and the Contracting Officer.

25 (c) Any return flow captured by the United States  
26 and determined by the Contracting Officer and CAWCD to be suitable

1 and available for use by the City may be delivered by the United  
2 States or Operating Agency to the City as a part of the water  
3 supply for which the City has subcontracted pursuant to Contract  
4 No. 5-07-30-W0061, and such water shall be accounted and paid for  
5 pursuant to the provisions thereof.

6 (d) All capture, recapture, use, reuse, and sale of  
7 return flow under this article shall be in accord with Arizona  
8 water law unless such law is inconsistent with the Congressional  
9 directives applicable to the Central Arizona Project.

10 ARTICLE 14  
11 Water and Air Pollution Control

12 14. The City, in carrying out this Contract, shall  
13 comply with all applicable water and air pollution laws and regu-  
14 lations of the United States and the State of Arizona and shall  
15 obtain all required permits or licenses from the appropriate  
16 Federal, State, or local authorities.

17 ARTICLE 15  
18 Quality of Water

19 15. The operation and maintenance of project facilities  
20 shall be performed in such manner as is practicable to maintain the  
21 quality of water made available through such facilities at the  
22 highest level reasonably attainable as determined by the Contract-  
23 ing Officer. Neither the United States nor the Operating Agency  
24 warrants the quality of water and is under no obligation to con-  
25 struct or furnish water treatment facilities to maintain or better  
26 the quality of water. The City waives its right to make a claim  
against the United States, the Operating Agency, or any



1 subcontractor because of changes in water quality caused by the  
2 commingling of water to be delivered under this Contract with other  
3 water.

4 ARTICLE 16  
5 Equal Opportunity

6 16. During the performance of this Contract, the City  
7 agrees as follows:

8 (a) The City will not discriminate against any  
9 employee or applicant for employment because of race, color,  
10 religion, sex, or national origin. The City will take affirmative  
11 action to ensure that applicants are employed, and that employees  
12 are treated during employment, without regard to their race, color,  
13 religion, sex, or national origin. Such action shall include, but  
14 not be limited to the following: employment, upgrading, demotion,  
15 or transfer; recruitment or recruitment advertising; layoff or  
16 termination; rates of pay or other forms of compensation; and  
17 selection for training, including apprenticeship. The City agrees  
18 to post in conspicuous places, available to employees and appli-  
19 cants for employment, notices to be provided by the Contracting  
20 Officer setting forth the provisions of this nondiscrimination  
21 clause.

22 (b) The City will, in all solicitations or  
23 advertisements for employees placed by or on behalf of the City,  
24 state that all qualified applicants will receive consideration for  
25 employment without discrimination because of race, color, religion,  
26 sex, or national origin.

1           (c) The City will send to each labor union or  
2 representative of workers with which it has a collective bargaining  
3 agreement or other contract or understanding, a notice, to be pro-  
4 vided by the Contracting Officer, advising said labor union or  
5 workers' representative of the City's commitments under Section 202  
6 of Executive Order No. 11246 of September 24, 1965, as amended, and  
7 shall post copies of the notice in conspicuous places available to  
8 employees and applicants for employment.

9           (d) The City will comply with all provisions of  
10 Executive Order No. 11246 of September 24, 1965, as amended, and of  
11 the rules, regulations, and relevant orders of the Secretary of  
12 Labor.

13           (e) The City will furnish all information and  
14 reports required by said amended Executive Order and by the rules,  
15 regulations, and orders of the Secretary of Labor, or pursuant  
16 thereto, and will permit access to its books, records, and accounts  
17 by the Contracting Officer and the Secretary of Labor for purposes  
18 of investigation to ascertain compliance with such rules, regula-  
19 tions, and orders.

20           (f) In the event of the City's noncompliance with  
21 the nondiscrimination clauses of this Contract or with any of such  
22 rules, regulations, or orders, this Contract may be canceled,  
23 terminated, or suspended, in whole or in part, and the City may be  
24 declared ineligible for further Government contracts in accordance  
25 with procedures authorized in said amended Executive Order, and  
26 such other sanctions may be imposed and remedies invoked as pro-

1 vided in said amended Executive Order, or by rule, regulation, or  
2 order of the Secretary of Labor, or as otherwise provided by law.

3 (g) The City will include the provisions of Sub-  
4 articles 16(a) through 16(g) in every subcontract or purchase order  
5 unless exempted by rules, regulations, or orders of the Secretary  
6 of Labor issued pursuant to Section 204 of said amended Executive  
7 Order, so that such provisions will be binding upon each subcon-  
8 tractor or vendor. The City will take such action with respect to  
9 any subcontract or purchase order as may be directed by the  
10 Secretary of Labor as a means of enforcing such provisions, in-  
11 cluding sanctions for noncompliance; Provided, however, That in the  
12 event the City becomes involved in, or is threatened with,  
13 litigation with a subcontractor or vendor as a result of such  
14 direction, the City may request the United States to enter into  
15 such litigation to protect the interests of the United States.

16 ARTICLE 17  
17 Compliance with Civil Rights Laws and Regulations

18 17. (a) The City shall comply with Title VI of the  
19 Civil Rights Act of 1964 (42 U.S.C. 2000d), Section 504 of the  
20 Rehabilitation Act of 1975 (Public Law 93-112, as amended), the Age  
21 Discrimination Act of 1975 (42 U.S.C. 6101, et seq.) and any other  
22 applicable civil rights laws, as well as with their respective  
23 implementing regulations and guidelines imposed by the U.S.  
24 Department of the Interior and/or Bureau of Reclamation.

25 (b) These statutes require that no person in the  
26 United States shall, on the grounds of race, color, national

1 origin, handicap, or age, be excluded from participation in, be  
2 denied the benefits of, or be otherwise subjected to discrimination  
3 under any program or activity receiving financial assistance from  
4 the Bureau of Reclamation. By executing this Contract, the City  
5 agrees to immediately take any measures necessary to implement this  
6 obligation, including permitting officials of the United States to  
7 inspect premises, programs, and documents.

8 (c) The City makes this agreement in consideration  
9 of and for the purpose of obtaining any and all Federal grants,  
10 loans, contracts, property discounts or other Federal financial  
11 assistance extended after the date hereof to the City by the Bureau  
12 of Reclamation, including installment payments after such date on  
13 account of arrangements for Federal financial assistance which were  
14 approved before such date. The City recognizes and agrees that  
15 such Federal assistance will be extended in reliance on the repre-  
16 sentations and agreements made in this article, and that the United  
17 States reserves the right to seek judicial enforcement thereof.

18 ARTICLE 18  
19 Notices

20 18. Any notice, demand, or request authorized or re-  
21 quired by this Contract shall be deemed to have been given, on  
22 behalf of the City and CAWCD, when mailed, postage prepaid, or  
23 delivered to the Regional Director, Lower Colorado Region, Bureau  
24 of Reclamation, P.O. Box 427, Boulder City, Nevada 89005, and on  
25 behalf of the United States and CAWCD, when mailed, postage pre-  
26 paid, or delivered to the Manager of the City, 31 East 5th Street,

1 Tempe, Arizona 85281, on behalf of the City and the United States,  
2 when mailed, postage prepaid, or delivered to the General Manager,  
3 Central Arizona Water Conservation District, 23636 North Seventh  
4 Street, Phoenix, Arizona 85024. The designation of the addressee  
5 or the address may be changed by notice given in the same manner as  
6 provided in this article for other notices.

7 ARTICLE 19

8 Assignment Limited--Successors and Assigns Obligated

9 19. The provisions of this Contract shall apply to and  
10 bind the successors and assigns of the parties hereto, but no  
11 assignment or transfer of this Contract or any right or interest  
12 therein shall be valid unless and until approved in writing by the  
13 Contracting Officer and CAWCD.

14 ARTICLE 20

15 Officials Not to Benefit

16 20. No Member of or Delegate to Congress, Resident  
17 Commissioner, or official of the City shall benefit from this  
18 Contract other than as a water user or landowner in the same manner  
19 as other water users or landowners.

20 ARTICLE 21

21 Transfer of OM&R Responsibility to CAWCD;  
22 Project Repayment

23 21. (a) At or prior to the date that the United States  
24 transfers OM&R responsibility for project works associated with  
25 delivery of water to the Cities to CAWCD as the Operating Agency,  
26 the United States shall secure the agreement of CAWCD to perform  
the United States' obligations under this Contract to deliver water  
under this Contract through the transferred works.

1 (b) For the purpose of determining the allocation  
2 and repayment of costs of the CAP as provided in Article 9.3 of the  
3 Repayment Contract and any amendment or revision thereof, the costs  
4 associated with the delivery of water to the City under this Con-  
5 tract shall be nonreimbursable, and such costs shall be excluded  
6 from CAWCD's repayment obligation.

7 ARTICLE 22  
8 Repayment Contract Controlling

9 22. Pursuant to the Repayment Contract, the United  
10 States has agreed to construct and, in the absence of an approved  
11 Operating Agency, to operate and maintain the works of the Central  
12 Arizona Project and to deliver Central Arizona Project water to the  
13 various subcontractors within CAWCD's service area; and CAWCD has  
14 obligated itself for the payment of various costs, expenses, and  
15 other amounts allocated to CAWCD pursuant to Article 9 of the  
16 Repayment Contract. The City expressly approves and agrees to all  
17 the terms presently set out in the Repayment Contract, or as such  
18 terms may be hereafter amended, and agrees to be bound by the  
19 actions to be taken and the determinations to be made under that  
20 Repayment Contract, except as otherwise provided herein.

21 IN WITNESS WHEREOF, the parties hereto have executed this  
22 Contract No. 9-07-30-W0238 the day and year first above-  
23 written.

24 . . .

25 . . .

26 . . .

THE UNITED STATES OF AMERICA


By 


CENTRAL ARIZONA WATER  
CONSERVATION DISTRICT

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

By \_\_\_\_\_  
President

CITY OF TEMPE, ARIZONA

Attest:   
Clerk

By   
Mayor

Approved  
as to Form:   
City Attorney

Exhibit "A"

CAP Master Repayment Contract

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Exhibit "B"

Assignment among RWCD, CAWCD and The United States  
(See Exhibit "12.3." to Agreement)

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Exhibit "C"

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EXHIBIT "3.h.5"

12

River Water Exchange Contract  
City of Mesa, Arizona

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Exhibit "3.h.5"  
RIVER WATER EXCHANGE CONTRACT  
City of Mesa, Arizona

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Exhibit "3.h.5"  
RIVER WATER EXCHANGE CONTRACT  
City of Mesa, Arizona

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Exhibits

Exhibit "A"	CAP Master Repayment Contract
Exhibit "B"	Assignment among RWCD, CAWCD and the United States
Exhibit "C"	SRPMIC Agreement Water Calculations (Tables 1 and 2)

1  
2 UNITED STATES  
3 DEPARTMENT OF THE INTERIOR  
4 BUREAU OF RECLAMATION

5 CONTRACT AMONG THE UNITED STATES,  
6 THE CENTRAL ARIZONA WATER CONSERVATION DISTRICT,  
7 AND THE CITY OF MESA, ARIZONA,  
8 PROVIDING FOR WATER SERVICE

9 ARTICLE 1  
10 Preamble

11 1. THIS CONTRACT, made as of the 12th day of February,  
12 1988, in pursuance of the Salt River Pima-Maricopa Indian Community  
13 Water Rights Settlement Act of 1988, P.L. 100-512, 102 Stat. 2549,  
14 and the Act of June 17, 1902 (32 Stat. 388), and acts amendatory  
15 thereof or supplementary thereto, including but not limited to the  
16 Boulder Canyon Project Act of December 21, 1928 (45 Stat. 1057),  
17 the Colorado River Basin Project Act of September 30, 1968 (82  
18 Stat. 885), as amended, hereinafter referred to collectively as the  
19 "Federal Reclamation Laws," and the various authorities and  
20 responsibilities of the Secretary of the Interior in relation to  
21 Indians and Indian Tribes, as contained in Title 25 U.S.C. and 43  
22 U.S.C. § 1457, among THE UNITED STATES OF AMERICA, acting through  
23 the Secretary of the Interior, the CENTRAL ARIZONA WATER CONSERVA-  
24 TION DISTRICT, hereinafter referred to as "CAWCD," a multi-county  
25 water conservation district organized under the laws of Arizona,  
26 with its principal place of business in Phoenix, Arizona, and the  
CITY OF MESA, Arizona, hereinafter referred to as the "City," with  
its principal place of business at 55 North Center Street, Mesa,  
Arizona;

1 WITNESSETH, THAT:

2 ARTICLE 2  
3 Explanatory Recitals

4 2. WHEREAS, the Colorado River Basin Project Act pro-  
5 vides, among other things, that for the purposes of furnishing  
6 irrigation and municipal and industrial water supplies to water  
7 deficient areas of Arizona and western New Mexico through direct  
8 diversion or exchange of water, control of floods, conservation and  
9 development of fish and wildlife resources, enhancement of recrea-  
10 tion opportunities, and for other purposes, the Secretary of the  
11 Interior shall construct, operate, and maintain the Central Arizona  
12 Project; and

13 WHEREAS, pursuant to the provisions of Arizona' Revised  
14 Statutes §§ 48-3701, et seq., CAWCD has been organized with the  
15 power to enter into a contract or contracts with the Secretary of  
16 the Interior to accomplish the purposes of Arizona Revised Sta-  
17 tutes, §§ 48-3701, et seq.; and

18 WHEREAS, pursuant to Section 304(b)(1) of the Colorado  
19 River Basin Project Act, the Secretary of the Interior has deter-  
20 mined that it is necessary to effect repayment of the cost of con-  
21 structing the Central Arizona Project pursuant to a master contract  
22 and that the United States, together with CAWCD, shall be a party  
23 to contracts that are in conformity with and subsidiary to the  
24 master contract; and

25 WHEREAS, the United States and CAWCD entered into Con-  
26 tract No. 14-06-W-245 dated December 15, 1972, which was amended on

1 December 1, 1988, hereinafter referred to as the "Repayment Con-  
2 tract," a copy of which is attached hereto as Exhibit "A" and by  
3 this reference made a part hereof, whereby CAWCD agrees to repay to  
4 the United States the reimbursable costs of the Central Arizona  
5 Project allocated to CAWCD; and

6 WHEREAS, the City has entered into a water service sub-  
7 contract with the United States and CAWCD for municipal and indus-  
8 trial water service from water supplies available from the Central  
9 Arizona Project, Contract No. 5-07-30-W0060; and

10 WHEREAS, the United States, the State of Arizona, the  
11 Salt River Pima-Maricopa Indian Community, the Salt River Valley  
12 Water Users' Association, the Salt River Project Agricultural  
13 Improvement and Power District, the Roosevelt Water Conservation  
14 District, the Roosevelt Irrigation District, the Cities of Phoenix,  
15 Scottsdale, Glendale, Mesa, Tempe, and Chandler and the Town of  
16 Gilbert, Arizona, and CAWCD have agreed to permanently settle the  
17 water rights of the Salt River Pima-Maricopa Indian Community and  
18 its members, to finally resolve pending litigation on water rights  
19 and damage claims, and to seek funding for implementation of the  
20 settlement; and

21 WHEREAS, the United States, acting through the Secretary  
22 of the Interior, has both a trust and fiduciary responsibility to  
23 make the Salt River Pima-Maricopa Indian reservation a permanent  
24 Tribal homeland for the Salt River Pima-Maricopa Indian Community;  
25 and

26 . . .



1           WHEREAS, as part of the water rights settlement with the  
2 Salt River Pima-Maricopa Indian Community, the United States is  
3 required to contract with the City for the delivery through Central  
4 Arizona Project facilities of not to exceed two thousand seven  
5 hundred sixty (2,760) acre-feet per year of Colorado River water  
6 which was not included in the determination of water supplies  
7 available to the Central Arizona Project, plus certain additional  
8 amounts of Central Arizona Project water to be made available each  
9 year by the Roosevelt Water Conservation District or the Secretary  
10 of the Interior from Central Arizona Project water supplies other-  
11 wise available for agricultural use;

12           NOW, THEREFORE, in consideration of the mutual covenants  
13 herein contained, the parties hereto agree as follows:

14                   ARTICLE 3  
15                   Definitions

16           3.   For purposes of this Contract:

17                   (a) "Agricultural water" shall mean water made  
18 available from the Central Arizona Project for the commercial pro-  
19 duction of agricultural crops or livestock, including domestic use  
20 incidental thereto, on tracts of land operated in units of more  
21 than five acres.

22                   (b) "CAWCD's service area" shall mean the area now  
23 included within the Central Arizona Water Conservation District,  
24 consisting of Maricopa, Pinal, and Pima Counties, Arizona, and such  
25 other counties as may hereafter become part of the District,

26           . . . .

1 exclusive of any Indian reservation land lying wholly or partly  
2 within said Counties.

3 (c) "Central Arizona Project" or "CAP" or "project"  
4 shall mean the project and works authorized by Section 301(a) of  
5 the Colorado River Basin Project Act and constructed by the United  
6 States pursuant to the provisions of said Act.

7 (d) "Cities" shall mean the City of Chandler, the  
8 City of Glendale, the City of Scottsdale, the City of Tempe, the  
9 City of Mesa, the City of Phoenix, and the Town of Gilbert.

10 (e) "Colorado River water" shall mean that Colorado  
11 River mainstream water to be delivered to the City under this  
12 Contract which has a Colorado River priority pre-dating  
13 September 30, 1968.

14 (f) "Contracting Officer" shall mean the Secretary  
15 or his authorized designee acting on his behalf.

16 (g) "Distribution works" shall mean those facil-  
17 ities constructed or used for the purpose of distributing water to  
18 or within the City's service area after said water has been trans-  
19 ported through the water supply system to the City's project turn-  
20 out(s).

21 (h) "Ground water recharge" shall mean the recharge  
22 of water pursuant to title 45, chapter 2, article 13, Arizona  
23 Revised Statutes, or the underground storage and recovery of water  
24 pursuant to title 45, chapter 3, Arizona Revised Statutes, or as  
25 said statutes may hereafter be amended or revised.

26 . . .

1 (i) "Miscellaneous water" shall mean water made  
2 available from the Central Arizona Project, or by exchange for such  
3 water, for recreational and fish and wildlife purposes at other  
4 than project facilities, and which has a lesser priority of use  
5 than agricultural water.

6 (j) "Municipal and industrial water," hereinafter  
7 sometimes referred to as "M&I water," shall mean water made avail-  
8 able from the Central Arizona Project other than agricultural water  
9 and miscellaneous water.

10 (k) "Notice of completion" shall mean the notice  
11 which the Contracting Officer issues to CAWCD to announce the sub-  
12 stantial completion of the water supply system, or of those fea-  
13 tures of the project which include or comprise the water supply  
14 system, or of the entire project if constructed concurrently,  
15 thereby initiating payments therefor allocated to CAWCD.

16 (l) "OM&R" shall mean the care, operation, mainte-  
17 nance, and replacement of project works.

18 (m) "Operating Agency" shall mean the entity or  
19 entities authorized to assume OM&R responsibility of transferred  
20 works and approved for that purpose by the Contracting Officer.

21 (n) "Assignment Water" shall mean that water to be  
22 delivered to the City under this Contract which is made available  
23 to the City by the Roosevelt Water Conservation District ("RWCD")  
24 or the Secretary of the Interior pursuant to the Assignment, dated  
25 as of February 12, 1988, among the United States, CAWCD, RWCD,  
26 . . .

1 and the Cities. A copy of the Assignment is attached hereto as  
2 Exhibit "B" and by this reference made a part hereof.

3 (o) "Project works" shall mean the principal works  
4 described in Section 301(a) of the Colorado River Basin Project  
5 Act, and appurtenances thereto, or as modified pursuant to the  
6 Repayment Contract, together with lands, interests in lands, and  
7 rights-of-way for such works and appurtenances.

8 (p) "Return flow" shall mean all agricultural, M&I,  
9 and miscellaneous waste water, seepage, and ground water which  
10 originates or results from Colorado River water or Assignment Water  
11 as defined herein, but shall not include any water delivered  
12 through the project works for ground water recharge purposes.

13 (q) "Secretary" shall mean the Secretary of the  
14 Interior of the United States or his duly authorized  
15 representative.

16 (r) "Settlement Agreement" shall mean the Agreement  
17 dated as of February 12, 1988, among the United States of America,  
18 the State of Arizona, the Salt River Pima-Maricopa Indian Commu-  
19 nity, the Salt River Project Agricultural Improvement and Power  
20 District, the Salt River Valley Water Users' Association, RWCD, the  
21 Roosevelt Irrigation District, the Cities, and CAWCD.

22 (s) "Subcontractor" shall mean any irrigation dis-  
23 trict, municipality, individual, or any other entity which enters  
24 into a water service subcontract with the United States and CAWCD  
25 in furtherance of the provisions of the Colorado River Basin  
26 Project Act.

1 (t) "Time of shortage" shall mean a calendar year  
2 for which the Secretary determines that a shortage exists pursuant  
3 to Section 301(b) of the Colorado River Basin Project Act, such  
4 that there is not sufficient water available for delivery from the  
5 Central Arizona Project in that year (after reduction in considera-  
6 tion of anticipated losses due to evaporation and seepage estimated  
7 to occur during transportation of such water through the water  
8 supply system and exclusive of "Colorado River water" as defined  
9 herein) to meet fully the entitlements of Indian contractors and  
10 non-Indian municipal and industrial subcontractors of Central  
11 Arizona Project water supplies.

12 (u) "Transferred works" shall mean such features of  
13 the project or such facilities of the water supply system as to  
14 which OM&R responsibility is transferred from the United States to  
15 the Operating Agency.

16 (v) "Water supply system" shall mean the Navajo  
17 Project, Havasu Pumping Plant, the Granite Reef, Salt-Gila, and  
18 Tucson aqueducts and associated pumping plants and appurtenant  
19 works, but not including Tucson Terminal Storage or any  
20 distribution works.

21 (w) "Year" shall mean the period between January 1  
22 through the next succeeding December 31.

23 ARTICLE 4  
24 Term

25 4. This Contract shall become effective upon its execu-  
26 tion by the parties hereto and its term shall be perpetual.

ARTICLE 5  
Delivery of Water

5. (a) The United States shall obtain rights to 22,000 acre-feet of annual consumptive use of mainstream Colorado River water in Arizona with a contractual priority pre-dating September 30, 1968, and which was not included in the determination of the water supplies available to the Central Arizona Project. The Secretary shall make such Colorado River water available for delivery as provided herein.

(b) Except as provided in Article 8 hereof, commencing with the year in which the Secretary issues notice of completion or the enforceability date of the Settlement Agreement, whichever is later, and for each year thereafter, the City shall be entitled to Colorado River water and Assignment Water in amounts not exceeding the following:

(i) Colorado River water -- 2,760 acre-feet;  
and

(ii) Assignment Water made available to the City by RWCD pursuant to Paragraph 2 of the Assignment attached hereto as Exhibit "B" -- 627 acre-feet; or

(iii) Assignment Water made available to the City by the Secretary pursuant to Paragraph 3 of the Assignment attached hereto as Exhibit "B" -- 376 acre-feet.

(c) The City's annual entitlement to Colorado River water under Subarticle 5(b)(i) hereof shall be deemed to be met if initially made available for delivery at CAWCD's project delivery

1 point on the Colorado River, and shall be subject to reduction on  
2 account of losses by reason of evaporation and see page occurring  
3 during the transportation of such water through the water supply  
4 system to the City's project delivery point. Said losses occurring  
5 on the City's Colorado River water supplies shall be determined by  
6 the Contracting Officer or the Operating Agency, but shall not  
7 exceed the City's pro rata share of losses as compared to losses  
8 due to evaporation and seepage occurring during transportation  
9 through the water supply system of all water supplies delivered  
10 during a year.

11 (d) The City's entitlement to Assignment Water  
12 under Subparagraphs 5(b)(ii) and 5(b)(iii) hereof, and its rights  
13 and obligations with respect to such Assignment Water, shall be  
14 subject to the terms and conditions of the Assignment attached  
15 hereto as Exhibit "B".

16 (e) The City's entitlement to Colorado River water  
17 and Assignment Water under this Contract shall be in addition to  
18 the City's entitlement to Central Arizona Project water for municipi-  
19 pal and industrial use under the City's Central Arizona Project M&I  
20 water service subcontract (Contract No. 5-07-30-W0060).

21 (f) During such periods as it operates and main-  
22 tains the Central Arizona Project, the United States shall deliver  
23 Colorado River water and Assignment Water to which the City is  
24 entitled under this Contract through the water supply system.  
25 Subject to the provisions of Subarticles 5(c) and 5(d) hereof, the  
26 United States shall use all reasonable diligence to make available

1 to the City the quantity of Colorado River water and Assignment  
2 Water specified in the schedule submitted by the City in accordance  
3 with Article 6 hereof. After transfer of OM&R responsibility to  
4 the Operating Agency, the United States shall make deliveries of  
5 Colorado River water and Assignment Water to the Operating Agency  
6 which shall make subsequent delivery of such water to the City as  
7 provided herein.

8 (g) The obligation of the United States and the  
9 Operating Agency to deliver Colorado River water and Assignment  
10 Water to the City under this Contract is subject to:

11 (i) The availability of such water for use in  
12 Arizona under the provisions of the Colorado River Compact, exe-  
13 cuted November 24, 1922; the Boulder Canyon Project Act, 45 Stat.  
14 1057, dated December 21, 1928; the Colorado River Basin Project  
15 Act, 82 Stat. 885, dated September 30, 1968, the contract between  
16 the United States and the State of Arizona dated February 9, 1944,  
17 the Opinion of the Supreme Court of the United States in the case  
18 of Arizona v. California, et al., rendered June 3, 1963, 373 U.S.  
19 546, and the Decree of that court in said case, entered March 9,  
20 1964, 376 U.S. 340, as amended on February 28, 1966, at 383 U.S.  
21 268, and supplemented on January 9, 1979, at 439 U.S. 419, or as  
22 hereafter modified;

23 (ii) Executive A, Seventy-Eighth Congress,  
24 Second Session, a treaty between the United States of America and  
25 the United Mexican States, signed at Washington on February 3,  
26 1944, relating to the utilization of the waters of the Colorado and



1 Tijuana Rivers and of the Rio Grande from Fort Quitman, Texas, to  
2 the Gulf of Mexico, and Executive H, Seventy-eighth Congress,  
3 Second Session, a protocol signed at Washington on November 14,  
4 1944, supplementary to the Treaty, all hereinafter referred to as  
5 the Mexican Water Treaty;

6 (iii) The express understanding and agreement by  
7 the City that this Contract is subject to the condition that Hoover  
8 Dam and Lake Mead shall be used: first, for river regulation,  
9 improvement of navigation, and flood control; second, for irriga-  
10 tion and domestic uses and satisfaction of present perfected rights  
11 in pursuance of Article VIII of the Colorado River Compact approved  
12 by Section 13(a) of the Boulder Canyon Project Act; and third, for  
13 power; and furthermore, that this Contract is made upon the express  
14 condition and with the express covenant that all rights hereunder  
15 shall be subject to and controlled by the Colorado River Compact  
16 and that the United States and City shall observe and be subject to  
17 and controlled by said Colorado River Compact and Boulder Canyon  
18 Project Act in the construction, management, and operation of  
19 Hoover Dam, Lake Mead, canals and other works, and the storage,  
20 diversion, delivery, and use of water to be delivered to City here-  
21 under; and

22 (iv) The right of the United States or the  
23 Operating Agency temporarily to discontinue or reduce the amount of  
24 water to be delivered hereunder whenever such discontinuance or  
25 reduction is made necessary for purposes of investigations, in-  
26 spections, replacements, maintenance, or repairs to any works what-

1 soever affecting, utilized or, in the opinion of the Secretary or  
2 the Operating Agency, necessary for delivery of water hereunder, it  
3 being understood that so far as feasible the United States or the  
4 Operating Agency will (i) do so during periods of low water demands  
5 and (ii) give reasonable notice in advance of such temporary dis-  
6 continuance or reduction.

7 (h) Subject to the terms and conditions herein, the  
8 United States and the Operating Agency shall be obligated to deli-  
9 ver Colorado River water and Assignment Water to the City without  
10 regard as to whether or not the Salt River Pima-Maricopa Indian  
11 Community exercises its right to use any or all of the exchange  
12 water referred to in Paragraph 12 of the Settlement Agreement.

13 (i) Delivery and use of Colorado River water and  
14 Assignment Water under this Contract is further conditioned on the  
15 following, and the City hereby agrees that:

16 (i) All uses of Colorado River water,  
17 Assignment Water and return flow shall be consistent with Arizona  
18 water law unless such law is inconsistent with the Congressional  
19 directives applicable to the Central Arizona Project.

20 (ii) The system or systems through which  
21 Colorado River water and Assignment Water for municipal and  
22 industrial (including groundwater recharge) purposes is conveyed  
23 after delivery to the City shall consist of pipelines, canals,  
24 distribution systems, or other conduits provided and maintained  
25 with linings adequate in the Contracting Officer's judgment to  
26 prevent excessive conveyance losses.

1 (iii) The City shall not pump, or within its  
2 legal authority, permit others to pump ground water from within the  
3 exterior boundaries of the City's service area, which has been  
4 delineated on a map filed with the Contractor and approved by the  
5 Contractor and the Contracting Officer, for use outside of said  
6 service area unless such pumping is permitted under Title 45,  
7 Chapter 2, Arizona Revised Statutes, as it may be amended from time  
8 to time, and the Contracting Officer, CAWCD, and the City shall  
9 agree, or shall have previously agreed, that a surplus of ground  
10 water exists and drainage is or was required; Provided, however,  
11 That such pumping may be approved by the Contracting Officer and  
12 CAWCD, and approval shall not be unreasonably withheld, if such  
13 pumping is in accord with the Colorado River Basin Project Act and  
14 upon submittal by the City of a written certification from the  
15 Arizona Department of Water Resources or its successor agency that  
16 the pumping and transportation of ground water is in accord with  
17 Title 45, Chapter 2, Arizona Revised Statutes, as it may be amended  
18 from time to time.

19 (iv) The City shall not sell or otherwise dis-  
20 pose of or permit the sale or other disposition of Colorado River  
21 water and Assignment Water for use outside of Maricopa, Pinal, and  
22 Pima Counties; Provided, however, That this does not prohibit ex-  
23 changes of Colorado River water and Assignment Water covered by  
24 separate agreements; and Provided, further, That this does not  
25 prohibit effluent exchanges with Indian tribes pursuant to Article  
26 . . . .

1 6.2 of the City's Central Arizona Project M&I water service  
2 subcontract (Contract No. 5-07-30-W0060).

3 (j) (i) Colorado River water and Assignment Water  
4 scheduled for delivery in any year under this contract may be used  
5 by the City or resold or exchanged by the City pursuant to appro-  
6 priate agreements approved by the Contracting Officer and CAWCD.  
7 If said water is resold or exchanged by the Contractor for an  
8 amount in excess of that which the City is obligated to pay under  
9 this Contract, the excess amount shall be paid forthwith by the  
10 City to CAWCD for application against the CAWCD's repayment obli-  
11 gation to the United States; Provided, however, That the Contractor  
12 shall be entitled to recover actual costs of transportation, treat-  
13 ment, and distribution, including but not limited to OM&R costs.

14 (ii) Colorado River water and Assignment Water  
15 scheduled for delivery in any year under this Contract that cannot  
16 be used, resold, or exchanged by the City may be made available by  
17 the Contracting Officer or the Operating Agency to other users. If  
18 such water is sold to or exchanged with other users, the City shall  
19 be relieved of its payments hereunder only to the extent of the  
20 amount paid to the Contracting Officer and the Operating Agency by  
21 such other users, but not to exceed the amount the City is  
22 obligated to pay under this Contract for said water.

23 (iii) In the event the City, the Contracting  
24 Officer, or the Operating Agency is unable to sell any portion of  
25 the Colorado River water or Assignment Water scheduled for delivery  
26 by the City but not required by the City in any year, the City

1 shall be relieved of the pumping energy portion of the OM&R charges  
2 associated with the undelivered water as determined by the  
3 Contracting Officer or the Operating Agency.

4 (k) The City shall have the right to use Colorado  
5 River water and Assignment Water received under this Contract for  
6 any purpose consistent with Arizona law, including ground water  
7 recharge.

8 ARTICLE 6  
9 Procedure for Ordering Water

10 6. At least six months prior to the delivery of  
11 Colorado River water and Assignment Water to the City under this  
12 Contract, the Contracting Officer or the Operating Agency shall  
13 issue a written notice of availability of such water to the City.  
14 The City will, in accordance with the procedures hereinafter set  
15 out, submit written schedules to the Contracting Officer and the  
16 Operating Agency showing the quantities of (i) Colorado River water  
17 and (ii) Assignment Water requested for delivery. The City shall  
18 submit a schedule which requests the delivery of all Assignment  
19 Water available to it. If the first notice of availability of  
20 water is issued to the City by the Contracting Officer or the  
21 Operating Agency prior to June 1 of any year, the first schedule  
22 for the balance of said year shall be submitted to the Contracting  
23 Officer and the Operating Agency within 30 days after the City's  
24 receipt of such notice. If such notice is issued after June 1 of  
25 any year, the first schedule shall be submitted to the Contracting  
26 Officer and the Operating Agency within 30 days after the City's

1 receipt of such notice and shall cover the balance of such year and  
2 the next succeeding year. Thereafter, the amounts, times, and  
3 rates of delivery of water to the City during any year shall be in  
4 accordance with a water delivery schedule for that year, such  
5 schedule to be determined in the following manner:

6 (a) On or before June 1 of each year, the  
7 Contracting Officer shall announce (i) the amount of Colorado River  
8 water and (ii) the amount of Assignment Water available for  
9 delivery during the following year in a written notice to the  
10 Operating Agency and the City.

11 (b) On or before October 1 of each year, the City  
12 shall submit in writing to the Operating Agency and the Contracting  
13 Officer a water delivery schedule indicating the amounts of (i)  
14 Colorado River water and (ii) Assignment Water desired by the City  
15 during each month of the following year along with a preliminary  
16 schedule of water desired for the succeeding 2 years. The City  
17 shall schedule for delivery each year all Assignment Water  
18 available to it for delivery during that year.

19 (c) Upon receipt of such schedule, the Contracting  
20 Officer and the Operating Agency shall review it and, after con-  
21 sultation with the City, shall make only such modifications to the  
22 schedule as are necessary to ensure that the amounts, times, and  
23 rates of delivery to the City are consistent with the delivery  
24 capability of the project, considering, among other things, the  
25 availability of water and the delivery schedules of all subcon-  
26 tractors of Central Arizona Project water service; Provided, That

1 this provision shall not be construed to reduce annual deliveries  
2 to the City.

3 (d) On or before November 15 of each year, the  
4 Contracting Officer or the Operating Agency shall determine and  
5 furnish to the City the water delivery schedule for the next suc-  
6 ceeding year which shall show the amounts of (i) Colorado River  
7 water and (ii) Assignment Water to be delivered to the City during  
8 each month of that year.

9 (e) The monthly water delivery schedules may be  
10 amended by the Contracting Officer or the Operating Agency upon the  
11 City's written request. Proposed amendments shall be submitted by  
12 the City within a reasonable time before the desired change is to  
13 become effective, and shall be subject to review and modification  
14 by the Contracting Officer or the Operating Agency in like manner  
15 as the schedule itself.

16 (f) In no event shall the Contracting Officer or  
17 the Operating Agency be required to deliver in any one month (i) an  
18 amount of Colorado River water greater than eleven percent (11%) of  
19 the City's maximum annual entitlement to Colorado River water under  
20 Subarticle 5(b)(i) of this Contract or (ii) an amount of Assignment  
21 Water greater than eleven percent (11%) of the City's maximum  
22 annual entitlement to Assignment Water under Subarticle 5(b)(ii) or  
23 5(b)(iii) of this Contract; Provided, however, That the Contracting  
24 Officer or the Operating Agency may deliver a greater percentage of  
25 such water in any month if such increased delivery is compatible  
26 with the overall delivery of Central Arizona Project water to CAP

1 subcontractors as determined by the Contracting Officer and the  
2 Operating Agency, and if the City agrees to accept such increased  
3 deliveries.

4 ARTICLE 7  
5 Points of Delivery--Measurement and  
6 Responsibility for Distribution of Water

7 7. (a) All water to be furnished to the City pursuant  
8 to this Contract shall be delivered at turnouts to be constructed  
9 by the United States at such point(s) on the water supply system as  
10 may be agreed upon in writing by the Contracting Officer and CAWCD,  
11 after consultation with the City.

12 (b) Unless the United States and the City agree by  
13 contract to the contrary, the City shall construct and install, at  
14 its sole cost and expense, connection facilities required to take  
15 and convey such water from the turnouts to the City's service  
16 area. The City shall furnish, for approval of the Contracting  
17 Officer, drawings showing the construction to be performed by the  
18 Contractor within the water supply system right-of-way six months  
19 before starting said construction. The facilities may be in-  
20 stalled, operated, and maintained on the water supply system right-  
21 of-way subject to such reasonable restrictions and regulations as  
22 to type, location, method of installation, operation, and mainte-  
23 nance as may be prescribed by the Contracting Officer.

24 (c) All water delivered to the City pursuant to  
25 this Contract shall be measured with equipment furnished and  
26 installed by the United States and operated and maintained by the  
United States or by the Operating Agency. Upon the request of the



1 City or the Operating Agency, the accuracy of such measurements  
2 shall be investigated by the Contracting Officer or by the Operat-  
3 ing Agency and the City, and any errors which may be mutually  
4 determined to have occurred therein shall be adjusted; Provided,  
5 That in the event the parties cannot agree on the required adjust-  
6 ment, the Contracting Officer's determination shall be conclusive.

7 (d) Neither the United States nor the Operating  
8 Agency shall be responsible for the control, carriage, handling,  
9 use, disposal, or distribution of water beyond the delivery  
10 point(s) agreed to pursuant to Subarticle 7(a). The City shall  
11 hold the United States and the Operating Agency harmless on account  
12 of damage or claim of damage of any nature whatsoever for which  
13 there is legal responsibility, including property damage, personal  
14 injury, or death arising out of or connected with the City's con-  
15 trol, carriage, handling, use, disposal, or distribution of water  
16 beyond said delivery point(s).

17 (e) In addition to the right of the United States  
18 under Subarticle 8.3(a)(iv) of the Repayment Contract temporarily  
19 to discontinue or reduce the amount of water to be delivered  
20 through the Central Arizona Project, the United States or the Oper-  
21 ating Agency may, after consultation with the City, temporarily  
22 discontinue or reduce the quantity of water to be furnished to the  
23 City as herein provided for the purpose of investigation, inspec-  
24 tion, maintenance, repair, or replacement of any CAP facilities or  
25 any part thereof necessary for the furnishing of water to the City  
26 under this Contract, but so far as feasible the United States or

1 the Operating Agency shall coordinate any such discontinuance or  
2 reduction with the City and shall give the City due notice in ad-  
3 vance of such temporary discontinuance or reduction, except in case  
4 of emergency, in which case no notice need be given. Neither the  
5 United States, its officers agents, and employees, nor the  
6 Operating Agency, its officers, agents, and employees, shall be  
7 liable for damages when, for any reason whatsoever, any such temp-  
8 orary discontinuance or reduction in delivery of water occurs. If  
9 any such discontinuance or temporary reduction results in deliver-  
10 ies to the City of less water than what has been paid for in  
11 advance, the City shall be entitled to be reimbursed for the appro-  
12 priate proportion of advance payments of OM&R charges prior to the  
13 date of the City's next payment of OM&R charges or the City may be  
14 given credit toward the next payment of OM&R charges if the City  
15 should so desire.

16 ARTICLE 8  
17 Priority in Case of Shortage

18 8. (a) Subject to the provisions of Section 304(e) of  
19 the Colorado River Basin Project Act, in the event of a shortage of  
20 the water supplies available to the Central Arizona Project, as  
21 determined by the Contracting Officer after consultation with  
22 CAWCD, Assignment Water furnished to the City under this Contract  
23 shall be subject to reduction in the same manner and to the same  
24 extent as agricultural water under Central Arizona Project  
25 agricultural water service subcontracts.

26 . . . .

(b) In a time of shortage, the City's entitlement to Colorado River water under Subarticle 5(b)(i) of this Contract shall be determined by the following formula:

City's entitlement to Colorado River water in a time of shortage = 
$$\frac{[(X+Y) \cdot (A+B)/(C+D)] - [(X/D) \cdot A]^*}{1}$$

Where: X = the City's entitlement to Central Arizona Project water for M&I water use under Article 4.12 of Contract No. 5-07-30-W0060, as the same may be amended or supplemented from time to time;

Y = 3,262 acre-feet;

A = the total amount of water available from the Central Arizona Project for non-Indian M&I water use (after reduction on account of losses due to evaporation and seepage estimated to occur during transportation of such water through the water supply system and exclusive of "Colorado River water" as defined herein), as determined by the Contracting Officer in accordance with the method outlined in the Record of Decision of the Secretary published in the Federal Register on March 24, 1983;

B = the total amount of Colorado River water available to the Cities pursuant to this Contract with the City of Mesa and like contracts with the other Cities (after reduction on account of losses due to evaporation and seepage estimated to occur during transportation of such water through the water supply system);

C = 26,000 acre-feet.

D = the sum of all non-Indian municipal and industrial subcontractors' entitlements to Central Arizona Project water for M&I water use under Article 4.12 of all non-Indian CAP municipal and industrial subcontracts, as the same may be amended or supplemented from time to time;

\* It is the intent of the parties that this calculation be per-

1       formed in a manner which is consistent with the method of  
2       calculation exemplified in Tables 1 and 2 attached hereto as  
3       Exhibit "C".

4               (c) Notwithstanding the provisions of Subarticle  
5       5(c) of this Contract, the City's entitlement to Colorado River  
6       water, as determined in accordance with the formula set forth in  
7       Subarticle 8(b) hereof, shall be made available to the City at the  
8       City's project turnout(s).

9               (d) In a time of shortage, any Colorado River water  
10       available from the 22,000 acre-feet to be obtained by the United  
11       States pursuant to Subarticle 5(a) hereof in excess of that neces-  
12       sary to satisfy the entitlement of the City under Subarticle 8(b)  
13       of this Contract and the entitlements of the other Cities under  
14       Subarticle 8(b) of like contracts with such Cities shall be made  
15       available by the Secretary for delivery to non-Indian CAP municipal  
16       and industrial subcontractors other than the Cities pursuant to the  
17       Central Arizona Project M&I water service subcontracts with such  
18       subcontractors, pro rata in proportion to each such subcontractor's  
19       entitlement to Central Arizona Project water for M&I use under such  
20       subcontractor's Central Arizona Project M&I water service sub-  
21       contract. The manner in which this Subarticle 8(d) is intended to  
22       operate is illustrated by Tables 1 and 2 attached hereto as Exhibit  
23       "C".

24                       ARTICLE 9  
                      Payments

25               9.   (a) Subject to the provisions of Article 11 hereof,  
26       the City shall pay in advance for CAP OM&R costs estimated to be

1 incurred by the United States or the Operating Agency in delivering  
2 Colorado River water and Assignment Water to the City pursuant to  
3 this Contract. At least 6 months prior to the first delivery of  
4 such water, or as soon thereafter as is practicable, the  
5 Contracting Officer or the Operating Agency shall furnish the City  
6 with an estimate of the City's share of OM&R costs to the end of  
7 the initial year of water delivery and an estimate of such costs  
8 for the following year. Within a reasonable time of the receipt of  
9 said estimates, as determined by the Contracting Officer or the  
10 Operating Agency, but prior to the delivery of water, the City  
11 shall advance to the Contracting Officer or the Operating Agency  
12 its share of such estimated costs to the end of the initial month  
13 of water delivery and without further notice or demand shall on or  
14 before the first day of each succeeding month of the initial year  
15 of water delivery and the following year advance to the Contracting  
16 Officer or the Operating Agency in equal monthly installments the  
17 City's share of such estimated costs. Advances of monthly payments  
18 for each subsequent year shall be made by the City to the Contract-  
19 ing Officer or the Operating Agency on the basis of annual esti-  
20 mates to be furnished by the Contracting Officer or the Operating  
21 Agency on or before June 1 preceding each said subsequent year, and  
22 the advances of payments for said estimated costs shall be due and  
23 payable in equal monthly payments on or before the first day of  
24 each month of the subsequent year. Differences between actual OM&R  
25 costs and estimated OM&R costs shall be adjusted in the next suc-  
26 ceeding annual estimates; Provided, however, That if in the opinion

1 of the Contracting Officer or the Operating Agency the amount of  
2 any annual OM&R estimate is likely to be insufficient to cover the  
3 above-mentioned costs during such period, the Contracting Officer  
4 or the Operating Agency may increase the annual estimate of the  
5 City's OM&R costs by written notice thereof to the City, and the  
6 City shall forthwith increase its remaining monthly payments in  
7 such year to the Contracting Officer or the Operating Agency by the  
8 amount necessary to cover the estimated insufficiency. All esti-  
9 mates of OM&R costs shall be accompanied by data and computations  
10 relied on by the Contracting Officer or the Operating Agency in  
11 determining the amounts of the estimated OM&R costs and shall be  
12 subject to joint review by the City and the Contracting Officer or  
13 the Operating Agency.

14 (b) Other than as provided for in Exhibit "B" here-  
15 to with respect to Assignment Water, the City shall not be required  
16 to pay any water service capital charge(s) with respect to Colorado  
17 River water or Assignment Water to which the City is entitled under  
18 this Contract.

19 (c) Payment of all OM&R charges becoming due here-  
20 under prior to or on the dates stipulated in Subarticle 9(a) hereof  
21 is a condition precedent to receiving water under this Contract.

22 (d) All payments to be made to the Operating Agency  
23 or the United States under Subarticle 9(a) hereof shall be made by  
24 the City as such payments fall due from revenues legally available  
25 to the City for such payment from the sale of water to its water  
26 users and from any and all other sources which might be legally

1 available; Provided, That no portion of the general taxing author-  
2 ity of the City, nor its general funds, nor funds from ad valorem  
3 taxes are obligated by the provisions of this Contract, nor shall  
4 such sources be liable for any payments, contributions, or other  
5 costs pursuant to this Contract, or to satisfy any obligation here-  
6 under unless duly and lawfully allocated and budgeted for such  
7 purpose by the City for the applicable budget year; and Provided,  
8 further, That no portion of this Contract shall ever be construed  
9 to create an obligation superior in lien to or on a parity with the  
10 Cities' revenue bonds now or hereafter issued. The City shall levy  
11 and impose such necessary water service charges and rates and use  
12 all the authority and resources available to it to collect all such  
13 necessary water service charges and rates in order that the City  
14 may meet its obligations hereunder and make in full all payments  
15 required under this Contract on or before the date such payments  
16 become due.

17 ARTICLE 10  
18 Loss of Entitlement

19 10. The City shall have no right to delivery of Colorado  
20 River water or Assignment Water under this Contract during any  
21 period in which the City may be in arrears in the payment of any  
22 charges due the United States or the Operating Agency. The Con-  
23 tracting Officer or the Operating Agency may sell to another entity  
24 any water determined to be available under the City's entitlement  
25 for which payment is in arrears; Provided, however, That except as  
26 provided to the contrary in Exhibit "B" hereto, the City may regain

1 the right to use any unsold portion of the water determined to be  
2 available under the City's original entitlement upon (i) payment of  
3 all delinquent charges plus any difference between the contractual  
4 obligation and the price received in the sale of the water by the  
5 Contracting Officer or Operating Agency and (ii) payment of charges  
6 for the current period.

7 ARTICLE 11  
8 Refusal to Accept Delivery

9 11. In the event the City fails or refuses in any year  
10 to accept delivery of the quantity of water available for delivery  
11 to and required to be scheduled by it pursuant to this Contract, or  
12 in the event the City in any year fails to submit a schedule for  
13 delivery as provided in Article 6 hereof, said failure or refusal  
14 shall not relieve the City of its obligation to make the payments  
15 required in this Contract.

16 ARTICLE 12  
17 Charges for Delinquent Payments

18 12. (a) The City shall be subject to interest, admin-  
19 istrative, and penalty charges on delinquent installments or pay-  
20 ments. When a payment is not received by the due date, the City  
21 shall pay an interest charge for each day the payment is delinquent  
22 beyond the due date. When a payment becomes 60 days delinquent,  
23 the City shall pay an administrative charge to cover additional  
24 costs of billing and processing the delinquent payment. When a  
25 payment is delinquent 90 days or more, the City shall pay an add-  
26 itional penalty charge of 6 percent per year for each day the pay-  
ment is delinquent beyond the due date. Further, the City shall



1 pay any fees incurred for debt collection services associated with  
2 a delinquent payment.

3 (b) The interest charge rate shall be the greater  
4 of the rate prescribed quarterly in the Federal Register by the  
5 Department of the Treasury for application to overdue payments, or  
6 the interest rate of 0.5 percent per month prescribed by Section 6  
7 of the Reclamation Project Act of 1939 (Public Law 76-260). The  
8 interest charge rate shall be determined as of the due date and  
9 remain fixed for the duration of the delinquent period.

10 (c) When a partial payment on a delinquent account  
11 is received, the amount received shall be applied, first to the  
12 penalty, second to the administrative charges, third to the accrued  
13 interest, and finally to the overdue payment.

14 ARTICLE 13  
15 Secretarial Control of Return Flow

16 13. (a) The Secretary reserves the right to capture all  
17 return flow flowing from the exterior boundaries of CAWCD's service  
18 area as a source of supply and for distribution to and use of the  
19 Central Arizona Project to the fullest extent practicable. The  
20 Secretary also reserves the right to capture for CAP use return  
21 flow which originates or results from water contracted for from the  
22 Central Arizona Project within the boundaries of CAWCD's service  
23 area if, in his judgment, such return flow is not being put to a  
24 beneficial use. The City may recapture and reuse or sell its  
25 return flow; Provided, however, That such return flow may not be  
26 sold for use outside Maricopa, Pinal, and Pima Counties; and

1 Provided, further, That this does not prohibit effluent exchanges  
2 with Indian tribes pursuant to Article 6.2 of the City's Central  
3 Arizona Project M&I water service subcontract (Contract No. 5-07-  
4 30-W0060). The City shall, at least 60 days in advance of any pro-  
5 posed sale of such water, furnish the following information in  
6 writing to the Contracting Officer and CAWCD:

7 (i) The name and address of the prospective  
8 buyer.

9 (ii) The location and proposed use of the  
10 return flow.

11 (iii) The price to be charged for the return  
12 flow.

13 (b) The price charged for the return flow may cover  
14 the cost incurred by the City for Colorado River water and  
15 Assignment Water plus the cost required to make the return flow  
16 usable. If the price received for the return flow is greater than  
17 the costs incurred by the City, as described above, the excess  
18 amount shall be forthwith paid by the City to the CAWCD for appli-  
19 cation against CAWCD's repayment obligation to the United States.  
20 Costs required to make return flow usable shall include but not be  
21 limited to capital costs and OM&R costs including transportation,  
22 treatment, and distribution, and the portion thereof which may be  
23 retained by the City shall be subject to the advance approval of  
24 CAWCD and the Contracting Officer.

25 (c) Any return flow captured by the United States  
26 and determined by the Contracting Officer and CAWCD to be suitable

1 and available for use by the City may be delivered by the United  
2 States or Operating Agency to the City as a part of the water  
3 supply for which the City has subcontracted pursuant to Contract  
4 No. 5-07-30-W0060, and such water shall be accounted and paid for  
5 pursuant to the provisions thereof.

6 (d) All capture, recapture, use, reuse, and sale of  
7 return flow under this article shall be in accord with Arizona  
8 water law unless such law is inconsistent with the Congressional  
9 directives applicable to the Central Arizona Project.

10 ARTICLE 14  
11 Water and Air Pollution Control

12 14. The City, in carrying out this Contract, shall  
13 comply with all applicable water and air pollution laws and  
14 regulations of the United States and the State of Arizona and shall  
15 obtain all required permits or licenses from the appropriate  
16 Federal, State, or local authorities.

17 ARTICLE 15  
18 Quality of Water

19 15. The operation and maintenance of project facilities  
20 shall be performed in such manner as is practicable to maintain the  
21 quality of water made available through such facilities at the  
22 highest level reasonably attainable as determined by the Contract-  
23 ing Officer. Neither the United States nor the Operating Agency  
24 warrants the quality of water and is under no obligation to con-  
25 struct or furnish water treatment facilities to maintain or better  
26 the quality of water. The City waives its right to make a claim  
against the United States, the Operating Agency, or any subcon-

1 tractor because of changes in water quality caused by the com-  
2 mingling of water to be delivered under this Contract with other  
3 water.

4 ARTICLE 16  
5 Equal Opportunity

6 16. During the performance of this Contract, the City  
7 agrees as follows:

8 (a) The City will not discriminate against any  
9 employee or applicant for employment because of race, color, reli-  
10 gion, sex, or national origin. The City will take affirmative  
11 action to ensure that applicants are employed, and that employees  
12 are treated during employment, without regard to their race, color,  
13 religion, sex, or national origin. Such action shall include, but  
14 not be limited to the following: employment, upgrading, demotion,  
15 or transfer; recruitment or recruitment advertising; layoff or  
16 termination; rates of pay or other forms of compensation; and  
17 selection for training, including apprenticeship. The City agrees  
18 to post in conspicuous places, available to employees and appli-  
19 cants for employment, notices to be provided by the Contracting  
20 Officer setting forth the provisions of this nondiscrimination  
21 clause.

22 (b) The City will, in all solicitations or adver-  
23 tisements for employees placed by or on behalf of the City, state  
24 that all qualified applicants will receive consideration for  
25 employment without discrimination because of race, color, religion,  
26 sex, or national origin.

1 (c) The City will send to each labor union or rep-  
2 resentative of workers with which it has a collective bargaining  
3 agreement or other contract or understanding, a notice, to be pro-  
4 vided by the Contracting Officer, advising said labor union or  
5 workers' representative of the City's commitments under Section 202  
6 of Executive Order No. 11246 of September 24, 1965, as amended, and  
7 shall post copies of the notice in conspicuous places available to  
8 employees and applicants for employment.

9 (d) The City will comply with all provisions of  
10 Executive Order No. 11246 of September 24, 1965, as amended, and of  
11 the rules, regulations, and relevant orders of the Secretary of  
12 Labor.

13 (e) The City will furnish all information and  
14 reports required by said amended Executive Order and by the rules,  
15 regulations, and orders of the Secretary of Labor, or pursuant  
16 thereto, and will permit access to its books, records, and accounts  
17 by the Contracting Officer and the Secretary of Labor for purposes  
18 of investigation to ascertain compliance with such rules, regula-  
19 tions, and orders.

20 (f) In the event of the City's noncompliance with  
21 the nondiscrimination clauses of this Contract or with any of such  
22 rules, regulations, or orders, this Contract may be canceled, term-  
23 inated, or suspended, in whole or in part, and the City may be  
24 declared ineligible for further Government contracts in accordance  
25 with procedures authorized in said amended Executive Order, and  
26 such other sanctions may be imposed and remedies invoked as pro-

1 vided in said amended Executive Order, or by rule, regulation, or  
2 order of the Secretary of Labor, or as otherwise provided by law.

3 (g) The City will include the provisions of Sub-  
4 articles 16(a) through 16(g) in every subcontract or purchase order  
5 unless exempted by rules, regulations, or orders of the Secretary  
6 of Labor issued pursuant to Section 204 of said amended Executive  
7 Order, so that such provisions will be binding upon each subcon-  
8 tractor or vendor. The City will take such action with respect to  
9 any subcontract or purchase order as may be directed by the Secre-  
10 tary of Labor as a means of enforcing such provisions, including  
11 sanctions for noncompliance; Provided, however, That in the event  
12 the City becomes involved in, or is threatened with, litigation  
13 with a subcontractor or vendor as a result of such direction, the  
14 City may request the United States to enter into such litigation to  
15 protect the interests of the United States.

#### 16 ARTICLE 17

#### 17 Compliance with Civil Rights Laws and Regulations

18 17. (a) The City shall comply with Title VI of the  
19 Civil Rights Act of 1964 (42 U.S.C. 2000d), Section 504 of the  
20 Rehabilitation Act of 1975 (Public Law 93-112, as amended), the Age  
21 Discrimination Act of 1975 (42 U.S.C. 6101, et seq.) and any other  
22 applicable civil rights laws, as well as with their respective  
23 implementing regulations and guidelines imposed by the U.S. Depart-  
24 ment of the Interior and/or Bureau of Reclamation.

25 (b) These statutes require that no person in the  
26 United States shall, on the grounds of race, color, national ori-

1 gin, handicap, or age, be excluded from participation in, be denied  
2 the benefits of, or be otherwise subjected to discrimination under  
3 any program or activity receiving financial assistance from the  
4 Bureau of Reclamation. By executing this Contract, the City agrees  
5 to immediately take any measures necessary to implement this obli-  
6 gation, including permitting officials of the United States to  
7 inspect premises, programs, and documents.

8 (c) The City makes this agreement in consideration  
9 of and for the purpose of obtaining any and all Federal grants,  
10 loans, contracts, property discounts or other Federal financial  
11 assistance extended after the date hereof to the City by the Bureau  
12 of Reclamation, including installment payments after such date on  
13 account of arrangements for Federal financial assistance which were  
14 approved before such date. The City recognizes and agrees that  
15 such Federal assistance will be extended in reliance on the repre-  
16 sentations and agreements made in this article, and that the United  
17 States reserves the right to seek judicial enforcement thereof.

18 ARTICLE 18  
19 Notices

20 18. Any notice, demand, or request authorized or  
21 required by this Contract shall be deemed to have been given, on  
22 behalf of the City and CAWCD, when mailed, postage prepaid, or  
23 delivered to the Regional Director, Lower Colorado Region, Bureau  
24 of Reclamation, P.O. Box 427, Boulder City, Nevada 89005, and on  
25 behalf of the United States and CAWCD, when mailed, postage pre-  
26 paid, or delivered to the Manager of the City, 55 North Center

1 Street, Mesa, Arizona 85201, on behalf of the City and the United  
2 States, when mailed, postage prepaid, or delivered to the General  
3 Manager, Central Arizona Water Conservation District, 23636 North  
4 Seventh Street, Phoenix, Arizona 85024. The designation of the  
5 addressee or the address may be changed by notice given in the same  
6 manner as provided in this article for other notices.

#### 7 ARTICLE 19

#### 8 Assignment Limited--Successors and Assigns Obligated

9 19. The provisions of this Contract shall apply to and  
10 bind the successors and assigns of the parties hereto, but no  
11 assignment or transfer of this Contract or any right or interest  
12 therein shall be valid unless and until approved in writing by the  
13 Contracting Officer and CAWCD.

#### 14 ARTICLE 20

#### 15 Officials Not to Benefit

16 20. No Member of or Delegate to Congress, Resident Com-  
17 missioner, or official of the City shall benefit from this Contract  
18 other than as a water user or landowner in the same manner as other  
19 water users or landowners.

#### 20 ARTICLE 21

#### 21 Transfer of OM&R Responsibility to CAWCD; 22 Project Repayment

23 21. (a) At or prior to the date that the United States  
24 transfers OM&R responsibility for project works associated with  
25 delivery of water to the Cities to CAWCD as the Operating Agency,  
26 the United States shall secure the agreement of CAWCD to perform  
the United States' obligations under this Contract to deliver water  
under this Contract through the transferred works.



1 (b) For the purpose of determining the allocation  
2 and repayment of costs of the CAP as provided in Article 9.3 of the  
3 Repayment Contract and any amendment or revision thereof, the costs  
4 associated with the delivery of water to the City under this Con-  
5 tract shall be nonreimbursable, and such costs shall be excluded  
6 from CAWCD's repayment obligation.

7 ARTICLE 22  
8 Repayment Contract Controlling

9 22. Pursuant to the Repayment Contract, the United  
10 States has agreed to construct and, in the absence of an approved  
11 Operating Agency, to operate and maintain the works of the Central  
12 Arizona Project and to deliver Central Arizona Project water to the  
13 various subcontractors within CAWCD's service area; and CAWCD has  
14 obligated itself for the payment of various costs, expenses, and  
15 other amounts allocated to CAWCD pursuant to Article 9 of the  
16 Repayment Contract. The City expressly approves and agrees to all  
17 the terms presently set out in the Repayment Contract, or as such  
18 terms may be hereafter amended, and agrees to be bound by the  
19 actions to be taken and the determinations to be made under that  
20 Repayment Contract, except as otherwise provided herein.

21 IN WITNESS WHEREOF, the parties hereto have executed this  
22 Contract No. 9-07-30-W0239 the day and year first above-  
23 written.

24 THE UNITED STATES OF AMERICA

25 By   
26 . . .

CENTRAL ARIZONA WATER CONSERVATION  
DISTRICT

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

By \_\_\_\_\_  
President

CITY OF MESA, ARIZONA

Attest: Shawn Eggers  
Clerk

By [Signature]  
Mayor

Approved  
as to Form: [Signature]  
City Attorney

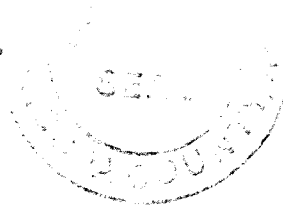


Exhibit "A"

CAP Master Repayment Contract

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Exhibit "B"

Assignment among RWCD, CAWCD and The United States  
(See Exhibit "12.3." to Agreement)

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Exhibit "C"



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EXHIBIT "3.h.6."

12

River Water Exchange Contract  
City of Phoenix, Arizona

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Exhibit "3.h.6"  
RIVER WATER EXCHANGE CONTRACT  
City of Phoenix, Arizona

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Exhibit "3.h.6"  
RIVER WATER EXCHANGE CONTRACT  
City of Phoenix, Arizona

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Exhibits

Exhibit "A"	CAP Master Repayment Contract
Exhibit "B"	Assignment among RWCD, CAWCD and the United States
Exhibit "C"	SRPMIC Agreement Water Calculations (Tables 1 and 2)

1  
2 UNITED STATES  
3 DEPARTMENT OF THE INTERIOR  
4 BUREAU OF RECLAMATION

5 CONTRACT AMONG THE UNITED STATES,  
6 THE CENTRAL ARIZONA WATER CONSERVATION DISTRICT,  
7 AND THE CITY OF PHOENIX, ARIZONA  
8 PROVIDING FOR WATER SERVICE

9 ARTICLE 1  
10 Preamble

11 1. THIS CONTRACT, made as of the 12th day of February,  
12 1988, in pursuance of the Salt River Pima-Maricopa Indian Community  
13 Water Rights Settlement Act of 1988, P.L. 100-512, 102 Stat. 2549,  
14 and the Act of June 17, 1902 (32 Stat. 388), and acts amendatory  
15 thereof or supplementary thereto, including but not limited to the  
16 Boulder Canyon Project Act of December 21, 1928 (45 Stat. 1057),  
17 the Colorado River Basin Project Act of September 30, 1968 (82  
18 Stat. 885), as amended, hereinafter referred to collectively as the  
19 "Federal Reclamation Laws," and the various authorities and re-  
20 sponsibilities of the Secretary of the Interior in relation to  
21 Indians and Indian Tribes, as contained in Title 25 U.S.C. and 43  
22 U.S.C. § 1457, among THE UNITED STATES OF AMERICA, acting through  
23 the Secretary of the Interior, the CENTRAL ARIZONA WATER CONSERVA-  
24 TION DISTRICT, hereinafter referred to as "CAWCD," a multi-county  
25 water conservation district organized under the laws of Arizona,  
26 with its principal place of business in Phoenix, Arizona, and the  
CITY OF PHOENIX, Arizona, hereinafter referred to as the "City,"  
with its principal place of business at 251 West Washington,  
Phoenix, Arizona;

1 WITNESSETH, THAT:

2 ARTICLE 2  
3 Explanatory Recitals

4 2. WHEREAS, the Colorado River Basin Project Act  
5 provides, among other things, that for the purposes of furnishing  
6 irrigation and municipal and industrial water supplies to water  
7 deficient areas of Arizona and western New Mexico through direct  
8 diversion or exchange of water, control of floods, conservation and  
9 development of fish and wildlife resources, enhancement of recrea-  
10 tion opportunities, and for other purposes, the Secretary of the  
11 Interior shall construct, operate, and maintain the Central Arizona  
12 Project; and

13 WHEREAS, pursuant to the provisions of Arizona Revised  
14 Statutes §§ 48-3701, et seq., CAWCD has been organized with the  
15 power to enter into a contract or contracts with the Secretary of  
16 the Interior to accomplish the purposes of Arizona Revised Sta-  
17 tutes, §§ 48-3701, et seq.; and

18 WHEREAS, pursuant to Section 304(b)(1) of the Colorado  
19 River Basin Project Act, the Secretary of the Interior has  
20 determined that it is necessary to effect repayment of the cost of  
21 constructing the Central Arizona Project pursuant to a master con-  
22 tract and that the United States, together with CAWCD, shall be a  
23 party to contracts that are in conformity with and subsidiary to  
24 the master contract; and

25 WHEREAS, the United States and CAWCD entered into Con-  
26 tract No. 14-06-W-245 dated December 15, 1972, which was amended on

1 December 1, 1988, hereinafter referred to as the "Repayment  
2 Contract," a copy of which is attached hereto as Exhibit "A" and by  
3 this reference made a part hereof, whereby CAWCD agrees to repay to  
4 the United States the reimbursable costs of the Central Arizona  
5 Project allocated to CAWCD; and

6 WHEREAS, the City has entered into a water service  
7 subcontract with the United States and CAWCD for municipal and  
8 industrial water service from water supplies available from the  
9 Central Arizona Project, Contract No. 5-07-30-W0059; and

10 WHEREAS, the United States, the State of Arizona, the  
11 Salt River Pima-Maricopa Indian Community, the Salt River Valley  
12 Water Users' Association, the Salt River Project Agricultural  
13 Improvement and Power District, the Roosevelt Water Conservation  
14 District, the Roosevelt Irrigation District, the Cities of Phoenix,  
15 Scottsdale, Glendale, Mesa, Tempe, and Chandler and the Town of  
16 Gilbert, Arizona, and CAWCD have agreed to permanently settle the  
17 water rights of the Salt River Pima-Maricopa Indian Community and  
18 its members, to finally resolve pending litigation on water rights  
19 and damage claims, and to seek funding for implementation of the  
20 settlement; and

21 WHEREAS, the United States, acting through the Secretary  
22 of the Interior, has both a trust and fiduciary responsibility to  
23 make the Salt River Pima-Maricopa Indian reservation a permanent  
24 Tribal homeland for the Salt River Pima-Maricopa Indian Community;  
25 and

26 . . .

1           WHEREAS, as part of the water rights settlement with the  
2 Salt River Pima-Maricopa Indian Community, the United States is  
3 required to contract with the City for the delivery through Central  
4 Arizona Project facilities of not to exceed five thousand (5,000)  
5 acre-feet per year of Colorado River water which was not included  
6 in the determination of water supplies available to the Central  
7 Arizona Project, plus certain additional amounts of Central Arizona  
8 Project water to be made available each year by the Roosevelt Water  
9 Conservation District or the Secretary of the Interior from Central  
10 Arizona Project water supplies otherwise available for agricultural  
11 use;

12           NOW, THEREFORE, in consideration of the mutual covenants  
13 herein contained, the parties hereto agree as follows:

14                           ARTICLE 3  
15                           Definitions

16           3.   For purposes of this Contract:

17                   (a) "Agricultural water" shall mean water made  
18 available from the Central Arizona Project for the commercial  
19 production of agricultural crops or livestock, including domestic  
20 use incidental thereto, on tracts of land operated in units of more  
21 than five acres.

22                   (b) "CAWCD's service area" shall mean the area now  
23 included within the Central Arizona Water Conservation District,  
24 consisting of Maricopa, Pinal, and Pima Counties, Arizona, and such  
25 other counties as may hereafter become part of the District,  
26 . . .

1 exclusive of any Indian reservation land lying wholly or partly  
2 within said Counties.

3 (c) "Central Arizona Project" or "CAP" or "project"  
4 shall mean the project and works authorized by Section 301(a) of  
5 the Colorado River Basin Project Act and constructed by the United  
6 States pursuant to the provisions of said Act.

7 (d) "Cities" shall mean the City of Chandler, the  
8 City of Glendale, the City of Scottsdale, the City of Tempe, the  
9 City of Mesa, the City of Phoenix, and the Town of Gilbert.

10 (e) "Colorado River water" shall mean that Colorado  
11 River mainstream water to be delivered to the City under this  
12 Contract which has a Colorado River priority pre-dating September  
13 30, 1968.

14 (f) "Contracting Officer" shall mean the Secretary  
15 or his authorized designee acting on his behalf.

16 (g) "Distribution works" shall mean those facil-  
17 ities constructed or used for the purpose of distributing water to  
18 or within the City's service area after said water has been trans-  
19 ported through the water supply system to the City's project  
20 turnout(s).

21 (h) "Ground water recharge" shall mean the recharge  
22 of water pursuant to title 45, chapter 2, article 13, Arizona  
23 Revised Statutes, or the underground storage and recovery of water  
24 pursuant to title 45, chapter 3, Arizona Revised Statutes, or as  
25 said statutes may hereafter be amended or revised.

26 . . .

1 (i) "Miscellaneous water" shall mean water made  
2 available from the Central Arizona Project, or by exchange for such  
3 water, for recreational and fish and wildlife purposes at other  
4 than project facilities, and which has a lesser priority of use  
5 than agricultural water.

6 (j) "Municipal and industrial water," hereinafter  
7 sometimes referred to as "M&I water," shall mean water made avail-  
8 able from the Central Arizona Project other than agricultural water  
9 and miscellaneous water.

10 (k) "Notice of completion" shall mean the notice  
11 which the Contracting Officer issues to CAWCD to announce the  
12 substantial completion of the water supply system, or of those  
13 features of the project which include or comprise the water supply  
14 system, or of the entire project if constructed concurrently,  
15 thereby initiating payments therefor allocated to CAWCD.

16 (l) "OM&R" shall mean the care, operation, main-  
17 tenance, and replacement of project works.

18 (m) "Operating Agency" shall mean the entity or  
19 entities authorized to assume OM&R responsibility of transferred  
20 works and approved for that purpose by the Contracting Officer.

21 (n) "Assignment Water" shall mean that water to be  
22 delivered to the City under this Contract which is made available  
23 to the City by the Roosevelt Water Conservation District ("RWCD")  
24 or the Secretary of the Interior pursuant to the Assignment, dated  
25 as of February 12, 1988, among the United States, CAWCD, RWCD,  
26 . . .

1 and the Cities. A copy of the Assignment is attached hereto as  
2 Exhibit "B" and by this reference made a part hereof.

3 (o) "Project works" shall mean the principal works  
4 described in Section 301(a) of the Colorado River Basin Project  
5 Act, and appurtenances thereto, or as modified pursuant to the  
6 Repayment Contract, together with lands, interests in lands, and  
7 rights-of-way for such works and appurtenances.

8 (p) "Return flow" shall mean all agricultural, M&I,  
9 and miscellaneous waste water, seepage, and ground water which  
10 originates or results from Colorado River water or Assignment Water  
11 as defined herein, but shall not include any water delivered  
12 through the project works for ground water recharge purposes.

13 (q) "Secretary" shall mean the Secretary of the  
14 Interior of the United States or his duly authorized  
15 representative.

16 (r) "Settlement Agreement" shall mean the Agreement  
17 dated as of February 12, 1988, among the United States of America,  
18 the State of Arizona, the Salt River Pima-Maricopa Indian  
19 Community, the Salt River Project Agricultural Improvement and  
20 Power District, the Salt River Valley Water Users' Association,  
21 RWCD, the Roosevelt Irrigation District, the Cities, and CAWCD.

22 (s) "Subcontractor" shall mean any irrigation  
23 district, municipality, individual, or any other entity which  
24 enters into a water service subcontract with the United States and  
25 CAWCD in furtherance of the provisions of the Colorado River Basin  
26 Project Act.



1           (t) "Time of shortage" shall mean a calendar year  
2 for which the Secretary determines that a shortage exists pursuant  
3 to Section 301(b) of the Colorado River Basin Project Act, such  
4 that there is not sufficient water available for delivery from the  
5 Central Arizona Project in that year (after reduction in  
6 consideration of anticipated losses due to evaporation and seepage  
7 estimated to occur during transportation of such water through the  
8 water supply system and exclusive of "Colorado River water" as  
9 defined herein) to meet fully the entitlements of Indian contrac-  
10 tors and non-Indian municipal and industrial subcontractors of  
11 Central Arizona Project water supplies.

12           (u) "Transferred works" shall mean such features of  
13 the project or such facilities of the water supply system as to  
14 which OM&R responsibility is transferred from the United States to  
15 the Operating Agency.

16           (v) "Water supply system" shall mean the Navajo  
17 Project, Havasu Pumping Plant, the Granite Reef, Salt-Gila, and  
18 Tucson aqueducts and associated pumping plants and appurtenant  
19 works, but not including Tucson Terminal Storage or any  
20 distribution works.

21           (w) "Year" shall mean the period between January 1  
22 through the next succeeding December 31.

23                           ARTICLE 4  
24                           Term

25           4. This Contract shall become effective upon its execu-  
26 tion by the parties hereto and its term shall be perpetual.

ARTICLE 5  
Delivery of Water

5. (a) The United States shall obtain rights to 22,000 acre-feet of annual consumptive use of mainstream Colorado River water in Arizona with a contractual priority pre-dating September 30, 1968, and which was not included in the determination of the water supplies available to the Central Arizona Project. The Secretary shall make such Colorado River water available for delivery as provided herein.

(b) Except as provided in Article 8 hereof, commencing with the year in which the Secretary issues notice of completion or the enforceability date of the Settlement Agreement, whichever is later, and for each year thereafter, the City shall be entitled to Colorado River water and Assignment Water in amounts not exceeding the following:

(i) Colorado River water -- 5,000 acre-feet;  
and

(ii) Assignment Water made available to the City by RWCD pursuant to Paragraph 2 of the Assignment attached hereto as Exhibit "B" -- 1,136 acre-feet; or

(iii) Assignment Water made available to the City by the Secretary pursuant to Paragraph 3 of the Assignment attached hereto as Exhibit "B" -- 682 acre-feet.

(c) The City's annual entitlement to Colorado River water under Subarticle 5(b)(i) hereof shall be deemed to be met if initially made available for delivery at CAWCD's project delivery

1 point on the Colorado River, and shall be subject to reduction on  
2 account of losses by reason of evaporation and seepage occurring  
3 during the transportation of such water through the water supply  
4 system to the City's project delivery point. Said losses occurring  
5 on the City's Colorado River water supplies shall be determined by  
6 the Contracting Officer or the Operating Agency, but shall not  
7 exceed the City's pro rata share of losses as compared to losses  
8 due to evaporation and seepage occurring during transportation  
9 through the water supply system of all water supplies delivered  
10 during a year.

11 (d) The City's entitlement to Assignment Water  
12 under Subparagraphs 5(b)(ii) and 5(b)(iii) hereof, and its rights  
13 and obligations with respect to such Assignment Water, shall be  
14 subject to the terms and conditions of the Assignment attached  
15 hereto as Exhibit "B".

16 (e) The City's entitlement to Colorado River water  
17 and Assignment Water under this Contract shall be in addition to  
18 the City's entitlement to Central Arizona Project water for municipi-  
19 pal and industrial use under the City's Central Arizona Project M&I  
20 water service subcontract (Contract No. 5-07-30-W0059).

21 (f) During such periods as it operates and main-  
22 tains the Central Arizona Project, the United States shall deliver  
23 Colorado River water and Assignment Water to which the City is  
24 entitled under this Contract through the water supply system.  
25 Subject to the provisions of Subarticles 5(c) and 5(d) hereof, the  
26 United States shall use all reasonable diligence to make available

1 to the City the quantity of Colorado River water and Assignment  
2 Water specified in the schedule submitted by the City in accordance  
3 with Article 6 hereof. After transfer of OM&R responsibility to  
4 the Operating Agency, the United States shall make deliveries of  
5 Colorado River water and Assignment Water to the Operating Agency  
6 which shall make subsequent delivery of such water to the City as  
7 provided herein.

8 (g) The obligation of the United States and the  
9 Operating Agency to deliver Colorado River water and Assignment  
10 Water to the City under this Contract is subject to:

11 (i) The availability of such water for use in  
12 Arizona under the provisions of the Colorado River Compact, exe-  
13 cuted November 24, 1922; the Boulder Canyon Project Act, 45 Stat.  
14 1057, dated December 21, 1928; the Colorado River Basin Project  
15 Act, 82 Stat. 885, dated September 30, 1968, the contract between  
16 the United States and the State of Arizona dated February 9, 1944,  
17 the Opinion of the Supreme Court of the United States in the case  
18 of Arizona v. California et al., rendered June 3, 1963, 373 U.S.  
19 546, and the Decree of that court in said case, entered March 9,  
20 1964, 376 U.S. 340, as amended on February 28, 1966, at 383 U.S.  
21 268, and supplemented on January 9, 1979, at 439 U.S. 419, or as  
22 hereafter modified;

23 (ii) Executive A, Seventy-Eighth Congress,  
24 Second Session, a treaty between the United States of America and  
25 the United Mexican States, signed at Washington on February 3,  
26 1944, relating to the utilization of the waters of the Colorado and

1 Tijuana Rivers and of the Rio Grande from Fort Quitman, Texas, to  
2 the Gulf of Mexico, and Executive H, Seventy-eighth Congress,  
3 Second Session, a protocol signed at Washington on November 14,  
4 1944, supplementary to the Treaty, all hereinafter referred to as  
5 the Mexican Water Treaty;

6 (iii) The express understanding and agreement by  
7 the City that this Contract is subject to the condition that Hoover  
8 Dam and Lake Mead shall be used: first, for river regulation,  
9 improvement of navigation, and flood control; second, for irriga-  
10 tion and domestic uses and satisfaction of present perfected rights  
11 in pursuance of Article VIII of the Colorado River Compact approved  
12 by Section 13(a) of the Boulder Canyon Project Act; and third, for  
13 power; and furthermore, that this Contract is made upon the express  
14 condition and with the express covenant that all rights hereunder  
15 shall be subject to and controlled by the Colorado River Compact  
16 and that the United States and City shall observe and be subject to  
17 and controlled by said Colorado River Compact and Boulder Canyon  
18 Project Act in the construction, management, and operation of  
19 Hoover Dam, Lake Mead, canals and other works, and the storage,  
20 diversion, delivery, and use of water to be delivered to City here-  
21 under; and

22 (iv) The right of the United States or the  
23 Operating Agency temporarily to discontinue or reduce the amount of  
24 water to be delivered hereunder whenever such discontinuance or  
25 reduction is made necessary for purposes of investigations, in-  
26 spections, replacements, maintenance, or repairs to any works

1 whatsoever affecting, utilized or, in the opinion of the Secretary  
2 or the Operating Agency, necessary for delivery of water hereunder,  
3 it being understood that so far as feasible the United States or  
4 the Operating Agency will (i) do so during periods of low water  
5 demands and (ii) give reasonable notice in advance of such  
6 temporary discontinuance or reduction.

7 (h) Subject to the terms and conditions herein, the  
8 United States and the Operating Agency shall be obligated to  
9 deliver Colorado River water and Assignment Water to the City with-  
10 out regard as to whether or not the Salt River Pima-Maricopa Indian  
11 Community exercises its right to use any or all of the exchange  
12 water referred to in Paragraph 12 of the Settlement Agreement.

13 (i) Delivery and use of Colorado River water and  
14 Assignment Water under this Contract is further conditioned on the  
15 following, and the City hereby agrees that:

16 (i) All uses of Colorado River water,  
17 Assignment Water and return flow shall be consistent with Arizona  
18 water law unless such law is inconsistent with the Congressional  
19 directives applicable to the Central Arizona Project.

20 (ii) The system or systems through which  
21 Colorado River water and Assignment Water for municipal and  
22 industrial (including ground water recharge) purposes is conveyed  
23 after delivery to the City shall consist of pipelines, canals,  
24 distribution systems, or other conduits provided and maintained  
25 with linings adequate in the Contracting Officer's judgment to  
26 prevent excessive conveyance losses.

1  
2 (iii) The City shall not pump, or within its  
3 legal authority, permit others to pump ground water from within the  
4 exterior boundaries of the City's service area, which has been  
5 delineated on a map filed with the Contractor and approved by the  
6 Contractor and the Contracting Officer, for use outside of said  
7 service area unless such pumping is permitted under Title 45,  
8 Chapter 2, Arizona Revised Statutes, as it may be amended from time  
9 to time, and the Contracting Officer, CAWCD, and the City shall  
10 agree, or shall have previously agreed, that a surplus of ground  
11 water exists and drainage is or was required; Provided, however,  
12 That such pumping may be approved by the Contracting Officer and  
13 CAWCD, and approval shall not be unreasonably withheld, if such  
14 pumping is in accord with the Colorado River Basin Project Act and  
15 upon submittal by the City of a written certification from the  
16 Arizona Department of Water Resources or its successor agency that  
17 the pumping and transportation of ground water is in accord with  
18 Title 45, Chapter 2, Arizona Revised Statutes, as it may be amended  
19 from time to time.

20 (iv) The City shall not sell or otherwise  
21 dispose of or permit the sale or other disposition of Colorado  
22 River water and Assignment Water for use outside of Maricopa,  
23 Pinal, and Pima Counties; Provided, however, That this does not  
24 prohibit exchanges of Colorado River water and Assignment Water  
25 covered by separate agreements; and Provided, further, That this  
26 does not prohibit effluent exchanges with Indian tribes pursuant to

1 Article 6.2 of the City's Central Arizona Project M&I water service  
2 subcontract (Contract No. 5-07-30-W0059).

3 (j) (i) Colorado River water and Assignment Water  
4 scheduled for delivery in any year under this contract may be used  
5 by the City or resold or exchanged by the City pursuant to appro-  
6 priate agreements approved by the Contracting Officer and CAWCD.  
7 If said water is resold or exchanged by the Contractor for an  
8 amount in excess of that which the City is obligated to pay under  
9 this Contract, the excess amount shall be paid forthwith by the  
10 City to CAWCD for application against the CAWCD's repayment obli-  
11 gation to the United States; Provided, however, That the Contractor  
12 shall be entitled to recover actual costs of transportation, treat-  
13 ment, and distribution, including but not limited to OM&R costs.

14 (ii) Colorado River water and Assignment Water  
15 scheduled for delivery in any year under this Contract that cannot  
16 be used, resold, or exchanged by the City may be made available by  
17 the Contracting Officer or the Operating Agency to other users. If  
18 such water is sold to or exchanged with other users, the City shall  
19 be relieved of its payments hereunder only to the extent of the  
20 amount paid to the Contracting Officer and the Operating Agency by  
21 such other users, but not to exceed the amount the City is  
22 obligated to pay under this Contract for said water.

23 (iii) In the event the City, the Contracting  
24 Officer, or the Operating Agency is unable to sell any portion of  
25 the Colorado River water or Assignment Water scheduled for delivery  
26 by the City but not required by the City in any year, the City



1 shall be relieved of the pumping energy portion of the OM&R charges  
2 associated with the undelivered water as determined by the  
3 Contracting Officer or the Operating Agency.

4 (k) The City shall have the right to use Colorado  
5 River water and Assignment Water received under this Contract for  
6 any purpose consistent with Arizona law, including ground water  
7 recharge.

8 ARTICLE 6  
9 Procedure for Ordering Water

10 6. At least six months prior to the delivery of  
11 Colorado River water and Assignment Water to the City under this  
12 Contract, the Contracting Officer or the Operating Agency shall  
13 issue a written notice of availability of such water to the City.  
14 The City will, in accordance with the procedures hereinafter set  
15 out, submit written schedules to the Contracting Officer and the  
16 Operating Agency showing the quantities of (i) Colorado River water  
17 and (ii) Assignment Water requested for delivery. The City shall  
18 submit a schedule which requests the delivery of all Assignment  
19 Water available to it. If the first notice of availability of  
20 water is issued to the City by the Contracting Officer or the  
21 Operating Agency prior to June 1 of any year, the first schedule  
22 for the balance of said year shall be submitted to the Contracting  
23 Officer and the Operating Agency within 30 days after the City's  
24 receipt of such notice. If such notice is issued after June 1 of  
25 any year, the first schedule shall be submitted to the Contracting  
26 Officer and the Operating Agency within 30 days after the City's

1 receipt of such notice and shall cover the balance of such year and  
2 the next succeeding year. Thereafter, the amounts, times, and  
3 rates of delivery of water to the City during any year shall be in  
4 accordance with a water delivery schedule for that year, such sche-  
5 dule to be determined in the following manner:

6 (a) On or before June 1 of each year, the Con-  
7 tracting Officer shall announce (i) the amount of Colorado River  
8 water and (ii) the amount of Assignment Water available for  
9 delivery during the following year in a written notice to the  
10 Operating Agency and the City.

11 (b) On or before October 1 of each year, the City  
12 shall submit in writing to the Operating Agency and the Contracting  
13 Officer a water delivery schedule indicating the amounts of (i)  
14 Colorado River water and (ii) Assignment Water desired by the City  
15 during each month of the following year along with a preliminary  
16 schedule of water desired for the succeeding 2 years. The City  
17 shall schedule for delivery each year all Assignment Water  
18 available to it for delivery during that year.

19 (c) Upon receipt of such schedule, the Contracting  
20 Officer and the Operating Agency shall review it and, after con-  
21 sultation with the City, shall make only such modifications to the  
22 schedule as are necessary to ensure that the amounts, times, and  
23 rates of delivery to the City are consistent with the delivery  
24 capability of the project, considering, among other things, the  
25 availability of water and the delivery schedules of all subcon-  
26 tractors of Central Arizona Project water service; Provided, That

1 this provision shall not be construed to reduce annual deliveries  
2 to the City.

3 (d) On or before November 15 of each year, the  
4 Contracting Officer or the Operating Agency shall determine and  
5 furnish to the City the water delivery schedule for the next suc-  
6 ceeding year which shall show the amounts of (i) Colorado River  
7 water and (ii) Assignment Water to be delivered to the City during  
8 each month of that year.

9 (e) The monthly water delivery schedules may be  
10 amended by the Contracting Officer or the Operating Agency upon the  
11 City's written request. Proposed amendments shall be submitted by  
12 the City within a reasonable time before the desired change is to  
13 become effective, and shall be subject to review and modification  
14 by the Contracting Officer or the Operating Agency in like manner  
15 as the schedule itself.

16 (f) In no event shall the Contracting Officer or  
17 the Operating Agency be required to deliver in any one month (i) an  
18 amount of Colorado River water greater than eleven percent (11%) of  
19 the City's maximum annual entitlement to Colorado River water under  
20 Subarticle 5(b)(i) of this Contract or (ii) an amount of Assignment  
21 Water greater than eleven percent (11%) of the City's maximum  
22 annual entitlement to Assignment Water under Subarticle 5(b)(ii) or  
23 5(b)(iii) of this Contract; Provided, however, That the Contracting  
24 Officer or the Operating Agency may deliver a greater percentage of  
25 such water in any month if such increased delivery is compatible  
26 with the overall delivery of Central Arizona Project water to CAP

1 subcontractors as determined by the Contracting Officer and the  
2 Operating Agency, and if the City agrees to accept such increased  
3 deliveries.

4 ARTICLE 7  
5 Points of Delivery--Measurement and  
6 Responsibility for Distribution of Water

7 7. (a) All water to be furnished to the City pursuant  
8 to this Contract shall be delivered at turnouts to be constructed  
9 by the United States at such point(s) on the water supply system as  
10 may be agreed upon in writing by the Contracting Officer and CAWCD,  
11 after consultation with the City.

12 (b) Unless the United States and the City agree by  
13 contract to the contrary, the City shall construct and install, at  
14 its sole cost and expense, connection facilities required to take  
15 and convey such water from the turnouts to the City's service  
16 area. The City shall furnish, for approval of the Contracting  
17 Officer, drawings showing the construction to be performed by the  
18 Contractor within the water supply system right-of-way six months  
19 before starting said construction. The facilities may be  
20 installed, operated, and maintained on the water supply system  
21 right-of-way subject to such reasonable restrictions and regula-  
22 tions as to type, location, method of installation, operation, and  
23 maintenance as may be prescribed by the Contracting Officer.

24 (c) All water delivered to the City pursuant to  
25 this Contract shall be measured with equipment furnished and  
26 installed by the United States and operated and maintained by the  
United States or by the Operating Agency. Upon the request of the

1 City or the Operating Agency, the accuracy of such measurements  
2 shall be investigated by the Contracting Officer or by the Operat-  
3 ing Agency and the City, and any errors which may be mutually  
4 determined to have occurred therein shall be adjusted; Provided,  
5 That in the event the parties cannot agree on the required adjust-  
6 ment, the Contracting Officer's determination shall be conclusive.

7 (d) Neither the United States nor the Operating  
8 Agency shall be responsible for the control, carriage, handling,  
9 use, disposal, or distribution of water beyond the delivery  
10 point(s) agreed to pursuant to Subarticle 7(a). The City shall  
11 hold the United States and the Operating Agency harmless on account  
12 of damage or claim of damage of any nature whatsoever for which  
13 there is legal responsibility, including property damage, personal  
14 injury, or death arising out of or connected with the City's con-  
15 trol, carriage, handling, use, disposal, or distribution of water  
16 beyond said delivery point(s).

17 (e) In addition to the right of the United States  
18 under Subarticle 8.3(a)(iv) of the Repayment Contract temporarily  
19 to discontinue or reduce the amount of water to be delivered  
20 through the Central Arizona Project, the United States or the  
21 Operating Agency may, after consultation with the City, temporarily  
22 discontinue or reduce the quantity of water to be furnished to the  
23 City as herein provided for the purpose of investigation,  
24 inspection, maintenance, repair, or replacement of any CAP facil-  
25 ities or any part thereof necessary for the furnishing of water to  
26 the City under this Contract, but so far as feasible the United

1 States or the Operating Agency shall coordinate any such  
2 discontinuance or reduction with the City and shall give the City  
3 due notice in advance of such temporary discontinuance or  
4 reduction, except in case of emergency, in which case no notice  
5 need be given. Neither the United States, its officers agents, and  
6 employees, nor the Operating Agency, its officers, agents, and  
7 employees, shall be liable for damages when, for any reason what-  
8 soever, any such temporary discontinuance or reduction in delivery  
9 of water occurs. If any such discontinuance or temporary reduction  
10 results in deliveries to the City of less water than what has been  
11 paid for in advance, the City shall be entitled to be reimbursed  
12 for the appropriate proportion of advance payments of OM&R charges  
13 prior to the date of the City's next payment of OM&R charges or the  
14 City may be given credit toward the next payment of OM&R charges if  
15 the City should so desire.

16 ARTICLE 8  
17 Priority in Case of Shortage

18 8. (a) Subject to the provisions of Section 304(e) of  
19 the Colorado River Basin Project Act, in the event of a shortage of  
20 the water supplies available to the Central Arizona Project, as  
21 determined by the Contracting Officer after consultation with  
22 CAWCD, Assignment Water furnished to the City under this Contract  
23 shall be subject to reduction in the same manner and to the same  
24 extent as agricultural water under Central Arizona Project  
25 agricultural water service subcontracts.  
26 . . . .

City's entitlement to Colorado River water in a time of shortage

X = the City's entitlement to Central Arizona Project water for M&I water use under Article 4.12 of Contract No. 5-07-30-W0059, as the same may be amended or supplemented from time to time;

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N  
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N	N
5	5

1 calculation exemplified in Tables 1 and 2 attached hereto as  
2 Exhibit "C".

3 (c) Notwithstanding the provisions of Subarticle  
4 5(c) of this Contract, the City's entitlement to Colorado River  
5 water, as determined in accordance with the formula set forth in  
6 Subarticle 8(b) hereof, shall be made available to the City at the  
7 City's project turnout(s).

8 (d) In a time of shortage, any Colorado River water  
9 available from the 22,000 acre-feet to be obtained by the United  
10 States pursuant to Subarticle 5(a) hereof in excess of that  
11 necessary to satisfy the entitlement of the City under Subarticle  
12 8(b) of this Contract and the entitlements of the other Cities  
13 under Subarticle 8(b) of like contracts with such Cities shall be  
14 made available by the Secretary for delivery to non-Indian CAP  
15 municipal and industrial subcontractors other than the Cities pur-  
16 suant to the Central Arizona Project M&I water service subcontracts  
17 with such subcontractors, pro rata in proportion to each such  
18 subcontractor's entitlement to Central Arizona Project water for  
19 M&I use under such subcontractor's Central Arizona Project M&I  
20 water service subcontract. The manner in which this Subarticle  
21 8(d) is intended to operate is illustrated by Tables 1 and 2  
22 attached hereto as Exhibit "C".

23 ARTICLE 9  
24 Payments

25 9. (a) Subject to the provisions of Article 11 hereof,  
26 the City shall pay in advance for CAP OM&R costs estimated to be  
incurred by the United States or the Operating Agency in delivering



1 Colorado River water and Assignment Water to the City pursuant to  
2 this Contract. At least 6 months prior to the first delivery of  
3 such water, or as soon thereafter as is practicable, the Con-  
4 tracting Officer or the Operating Agency shall furnish the City  
5 with an estimate of the City's share of OMR costs to the end of  
6 the initial year of water delivery and an estimate of such costs  
7 for the following year. Within a reasonable time of the receipt of  
8 said estimates, as determined by the Contracting Officer or the  
9 Operating Agency, but prior to the delivery of water, the City  
10 shall advance to the Contracting Officer or the Operating Agency  
11 its share of such estimated costs to the end of the initial month  
12 of water delivery and without further notice or demand shall on or  
13 before the first day of each succeeding month of the initial year  
14 of water delivery and the following year advance to the Contracting  
15 Officer or the Operating Agency in equal monthly installments the  
16 City's share of such estimated costs. Advances of monthly payments  
17 for each subsequent year shall be made by the City to the  
18 Contracting Officer or the Operating Agency on the basis of annual  
19 estimates to be furnished by the Contracting Officer or the  
20 Operating Agency on or before June 1 preceding each said subsequent  
21 year, and the advances of payments for said estimated costs shall  
22 be due and payable in equal monthly payments on or before the first  
23 day of each month of the subsequent year. Differences between  
24 actual OMR costs and estimated OMR costs shall be adjusted in the  
25 next succeeding annual estimates; Provided, however, That if in the  
26 opinion of the Contracting Officer or the Operating Agency the

1 amount of any annual OM&R estimate is likely to be insufficient to  
2 cover the above-mentioned costs during such period, the Contracting  
3 Officer or the Operating Agency may increase the annual estimate of  
4 the City's OM&R costs by written notice thereof to the City, and  
5 the City shall forthwith increase its remaining monthly payments in  
6 such year to the Contracting Officer or the Operating Agency by the  
7 amount necessary to cover the estimated insufficiency. All esti-  
8 mates of OM&R costs shall be accompanied by data and computations  
9 relied on by the Contracting Officer or the Operating Agency in  
10 determining the amounts of the estimated OM&R costs and shall be  
11 subject to joint review by the City and the Contracting Officer or  
12 the Operating Agency.

13 (b) Other than as provided for in Exhibit "B"  
14 hereto with respect to Assignment Water, the City shall not be  
15 required to pay any water service capital charge(s) with respect to  
16 Colorado River water or Assignment Water to which the City is  
17 entitled under this Contract.

18 (c) Payment of all OM&R charges becoming due here-  
19 under prior to or on the dates stipulated in Subarticle 9(a) hereof  
20 is a condition precedent to receiving water under this Contract.

21 (d) All payments to be made to the Operating Agency  
22 or the United States under Subarticle 9(a) hereof shall be made by  
23 the City as such payments fall due from revenues legally available  
24 to the City for such payment from the sale of water to its water  
25 users and from any and all other sources which might be legally  
26 available; Provided, That no portion of the general taxing autho-

1 rity of the City, nor its general funds, nor funds from ad valorem  
2 taxes are obligated by the provisions of this Contract, nor shall  
3 such sources be liable for any payments, contributions, or other  
4 costs pursuant to this Contract, or to satisfy any obligation here-  
5 under unless duly and lawfully allocated and budgeted for such  
6 purpose by the City for the applicable budget year; and Provided,  
7 further, That no portion of this Contract shall ever be construed  
8 to create an obligation superior in lien to or on a parity with the  
9 Cities' revenue bonds now or hereafter issued. The City shall levy  
10 and impose such necessary water service charges and rates and use  
11 all the authority and resources available to it to collect all such  
12 necessary water service charges and rates in order that the City  
13 may meet its obligations hereunder and make in full all payments  
14 required under this Contract on or before the date such payments  
15 become due.

16 ARTICLE 10  
17 Loss of Entitlement

18 10. The City shall have no right to delivery of Colorado  
19 River water or Assignment Water under this Contract during any  
20 period in which the City may be in arrears in the payment of any  
21 charges due the United States or the Operating Agency. The  
22 Contracting Officer or the Operating Agency may sell to another  
23 entity any water determined to be available under the City's  
24 entitlement for which payment is in arrears; Provided, however,  
25 That, except as provided to the contrary in Exhibit "B" hereto, the  
26 City may regain the right to use any unsold portion of the water

1 determined to be available under the City's original entitlement  
2 upon (i) payment of all delinquent charges plus any difference  
3 between the contractual obligation and the price received in the  
4 sale of the water by the Contracting Officer or Operating Agency  
5 and (ii) payment of charges for the current period.

6 ARTICLE 11  
7 Refusal to Accept Delivery

8 11. In the event the City fails or refuses in any year  
9 to accept delivery of the quantity of water available for delivery  
10 to and required to be scheduled by it pursuant to this Contract, or  
11 in the event the City in any year fails to submit a schedule for  
12 delivery as provided in Article 6 hereof, said failure or refusal  
13 shall not relieve the City of its obligation to make the payments  
14 required in this Contract.

15 ARTICLE 12  
16 Charges for Delinquent Payments

17 12. (a) The City shall be subject to interest,  
18 administrative, and penalty charges on delinquent installments or  
19 payments. When a payment is not received by the due date, the City  
20 shall pay an interest charge for each day the payment is delinquent  
21 beyond the due date. When a payment becomes 60 days delinquent,  
22 the City shall pay an administrative charge to cover additional  
23 costs of billing and processing the delinquent payment. When a  
24 payment is delinquent 90 days or more, the City shall pay an addi-  
25 tional penalty charge of 6 percent per year for each day the  
26 payment is delinquent beyond the due date. Further, the City shall

. . . .

1 pay any fees incurred for debt collection services associated with  
2 a delinquent payment.

3 (b) The interest charge rate shall be the greater  
4 of the rate prescribed quarterly in the Federal Register by the  
5 Department of the Treasury for application to overdue payments, or  
6 the interest rate of 0.5 percent per month prescribed by Section 6  
7 of the Reclamation Project Act of 1939 (Public Law 76-260). The  
8 interest charge rate shall be determined as of the due date and  
9 remain fixed for the duration of the delinquent period.

10 (c) When a partial payment on a delinquent account  
11 is received, the amount received shall be applied, first to the  
12 penalty, second to the administrative charges, third to the accrued  
13 interest, and finally to the overdue payment.

14 ARTICLE 13  
15 Secretarial Control of Return Flow

16 13. (a) The Secretary reserves the right to capture all  
17 return flow flowing from the exterior boundaries of CAWCD's service  
18 area as a source of supply and for distribution to and use of the  
19 Central Arizona Project to the fullest extent practicable. The  
20 Secretary also reserves the right to capture for CAP use return  
21 flow which originates or results from water contracted for from the  
22 Central Arizona Project within the boundaries of CAWCD's service  
23 area if, in his judgment, such return flow is not being put to a  
24 beneficial use. The City may recapture and reuse or sell its  
25 return flow; Provided, however, That such return flow may not be  
26 sold for use outside Maricopa, Pinal, and Pima Counties; and

1 Provided, further, That this does not prohibit effluent exchanges  
2 with Indian tribes pursuant to Article 6.2 of the City's Central  
3 Arizona Project M&I water service subcontract (Contract No. 5-07-  
4 30-W0059). The City shall, at least 60 days in advance of any  
5 proposed sale of such water, furnish the following information in  
6 writing to the Contracting Officer and CAWCD:

7 (i) The name and address of the prospective  
8 buyer.

9 (ii) The location and proposed use of the  
10 return flow.

11 (iii) The price to be charged for the return  
12 flow.

13 (b) The price charged for the return flow may cover  
14 the cost incurred by the City for Colorado River water and  
15 Assignment Water plus the cost required to make the return flow  
16 usable. If the price received for the return flow is greater than  
17 the costs incurred by the City, as described above, the excess  
18 amount shall be forthwith paid by the City to the CAWCD for appli-  
19 cation against CAWCD's repayment obligation to the United States.  
20 Costs required to make return flow usable shall include but not be  
21 limited to capital costs and OM&R costs including transportation,  
22 treatment, and distribution, and the portion thereof which may be  
23 retained by the City shall be subject to the advance approval of  
24 CAWCD and the Contracting Officer.

25 (c) Any return flow captured by the United States  
26 and determined by the Contracting Officer and CAWCD to be suitable

1 and available for use by the City may be delivered by the United  
2 States or Operating Agency to the City as a part of the water  
3 supply for which the City has subcontracted pursuant to Contract  
4 No. 5-07-30-W0059, and such water shall be accounted and paid for  
5 pursuant to the provisions thereof.

6 (d) All capture, recapture, use, reuse, and sale of  
7 return flow under this article shall be in accord with Arizona  
8 water law unless such law is inconsistent with the Congressional  
9 directives applicable to the Central Arizona Project.

10 ARTICLE 14  
11 Water and Air Pollution Control

12 14. The City, in carrying out this Contract, shall  
13 comply with all applicable water and air pollution laws and regu-  
14 lations of the United States and the State of Arizona and shall  
15 obtain all required permits or licenses from the appropriate  
16 Federal, State, or local authorities.

17 ARTICLE 15  
18 Quality of Water

19 15. The operation and maintenance of project facilities  
20 shall be performed in such manner as is practicable to maintain the  
21 quality of water made available through such facilities at the  
22 highest level reasonably attainable as determined by the Contract-  
23 ing Officer. Neither the United States nor the Operating Agency  
24 warrants the quality of water and is under no obligation to con-  
25 struct or furnish water treatment facilities to maintain or better  
26 the quality of water. The City waives its right to make a claim  
against the United States, the Operating Agency, or any subcon-

1 tractor because of changes in water quality caused by the  
2 commingling of water to be delivered under this Contract with other  
3 water.

4 ARTICLE 16  
5 Equal Opportunity

6 16. During the performance of this Contract, the City  
7 agrees as follows:

8 (a) The City will not discriminate against any  
9 employee or applicant for employment because of race, color,  
10 religion, sex, or national origin. The City will take affirmative  
11 action to ensure that applicants are employed, and that employees  
12 are treated during employment, without regard to their race, color,  
13 religion, sex, or national origin. Such action shall include, but  
14 not be limited to the following: employment, upgrading, demotion,  
15 or transfer; recruitment or recruitment advertising; layoff or  
16 termination; rates of pay or other forms of compensation; and  
17 selection for training, including apprenticeship. The City agrees  
18 to post in conspicuous places, available to employees and appli-  
19 cants for employment, notices to be provided by the Contracting  
20 Officer setting forth the provisions of this nondiscrimination  
21 clause.

22 (b) The City will, in all solicitations or  
23 advertisements for employees placed by or on behalf of the City,  
24 state that all qualified applicants will receive consideration for  
25 employment without discrimination because of race, color, religion,  
26 sex, or national origin.



1 (c) The City will send to each labor union or  
2 representative of workers with which it has a collective bargaining  
3 agreement or other contract or understanding, a notice, to be pro-  
4 vided by the Contracting Officer, advising said labor union or  
5 workers' representative of the City's commitments under Section 202  
6 of Executive Order No. 11246 of September, 24, 1965, as amended, and  
7 shall post copies of the notice in conspicuous places available to  
8 employees and applicants for employment.

9 (d) The City will comply with all provisions of  
10 Executive Order No. 11246 of September 24, 1965, as amended, and of  
11 the rules, regulations, and relevant orders of the Secretary of  
12 Labor.

13 (e) The City will furnish all information and  
14 reports required by said amended Executive Order and by the rules,  
15 regulations, and orders of the Secretary of Labor, or pursuant  
16 thereto, and will permit access to its books, records, and accounts  
17 by the Contracting Officer and the Secretary of Labor for purposes  
18 of investigation to ascertain compliance with such rules, regula-  
19 tions, and orders.

20 (f) In the event of the City's noncompliance with  
21 the nondiscrimination clauses of this Contract or with any of such  
22 rules, regulations, or orders, this Contract may be canceled,  
23 terminated, or suspended, in whole or in part, and the City may be  
24 declared ineligible for further Government contracts in accordance  
25 with procedures authorized in said amended Executive Order, and  
26 such other sanctions may be imposed and remedies invoked as pro-

1 vided in said amended Executive Order, or by rule, regulation, or  
2 order of the Secretary of Labor, or as otherwise provided by law.

3 (g) The City will include the provisions of Sub-  
4 articles 16(a) through 16(g) in every subcontract or purchase order  
5 unless exempted by rules, regulations, or orders of the Secretary  
6 of Labor issued pursuant to Section 204 of said amended Executive  
7 Order, so that such provisions will be binding upon each subcon-  
8 tractor or vendor. The City will take such action with respect to  
9 any subcontract or purchase order as may be directed by the  
10 Secretary of Labor as a means of enforcing such provisions,  
11 including sanctions for noncompliance; Provided, however, That in  
12 the event the City becomes involved in, or is threatened with,  
13 litigation with a subcontractor or vendor as a result of such  
14 direction, the City may request the United States to enter into  
15 such litigation to protect the interests of the United States.

#### 16 ARTICLE 17

#### 17 Compliance with Civil Rights Laws and Regulations

18 17. (a) The City shall comply with Title VI of the  
19 Civil Rights Act of 1964 (42 U.S.C. 2000d), Section 504 of the  
20 Rehabilitation Act of 1975 (Public Law 93-112, as amended), the Age  
21 Discrimination Act of 1975 (42 U.S.C. 6101, et seq.) and any other  
22 applicable civil rights laws, as well as with their respective  
23 implementing regulations and guidelines imposed by the U.S.  
24 Department of the Interior and/or Bureau of Reclamation.

25 (b) These statutes require that no person in the  
26 United States shall, on the grounds of race, color, national

1 origin, handicap, or age, be excluded from participation in, be  
2 denied the benefits of, or be otherwise subjected to discrimination  
3 under any program or activity receiving financial assistance from  
4 the Bureau of Reclamation. By executing this Contract, the City  
5 agrees to immediately take any measures necessary to implement this  
6 obligation, including permitting officials of the United States to  
7 inspect premises, programs, and documents.

8 (c) The City makes this agreement in consideration  
9 of and for the purpose of obtaining any and all Federal grants,  
10 loans, contracts, property discounts or other Federal financial  
11 assistance extended after the date hereof to the City by the Bureau  
12 of Reclamation, including installment payments after such date on  
13 account of arrangements for Federal financial assistance which were  
14 approved before such date. The City recognizes and agrees that  
15 such Federal assistance will be extended in reliance on the repre-  
16 sentations and agreements made in this article, and that the United  
17 States reserves the right to seek judicial enforcement thereof.

18 ARTICLE 18  
19 Notices

20 18. Any notice, demand, or request authorized or re-  
21 quired by this Contract shall be deemed to have been given, on  
22 behalf of the City and CAWCD, when mailed, postage prepaid, or  
23 delivered to the Regional Director, Lower Colorado Region, Bureau  
24 of Reclamation, P.O. Box 427, Boulder City, Nevada 89005, and on  
25 behalf of the United States and CAWCD, when mailed, postage pre-  
26 paid, or delivered to the Manager of the City, 251 West Washington,

1 Phoenix, Arizona 85003, on behalf of the City and the United  
2 States, when mailed, postage prepaid, or delivered to the General  
3 Manager, Central Arizona Water Conservation District, 23636 North  
4 Seventh Street, Phoenix, Arizona 85024. The designation of the  
5 addressee or the address may be changed by notice given in the same  
6 manner as provided in this article for other notices.

7 ARTICLE 19

8 Assignment Limited--Successors and Assigns Obligated

9 19. The provisions of this Contract shall apply to and  
10 bind the successors and assigns of the parties hereto, but no  
11 assignment or transfer of this Contract or any right or interest  
12 therein shall be valid unless and until approved in writing by the  
13 Contracting Officer and CAWCD.

14 ARTICLE 20

Officials Not to Benefit

15 20. No Member of or Delegate to Congress, Resident  
16 Commissioner, or official of the City shall benefit from this  
17 Contract other than as a water user or landowner in the same manner  
18 as other water users or landowners.

19 ARTICLE 21

20 Transfer of OM&R Responsibility to CAWCD;  
Project Repayment

21 21. (a) At or prior to the date that the United States  
22 transfers OM&R responsibility for project works associated with  
23 delivery of water to the Cities to CAWCD as the Operating Agency,  
24 the United States shall secure the agreement of CAWCD to perform  
25 the United States' obligations under this Contract to deliver water  
26 under this Contract through the transferred works.

1 (b) For the purpose of determining the allocation  
2 and repayment of costs of the CAP as provided in Article 9.3 of the  
3 Repayment Contract and any amendment or revision thereof, the costs  
4 associated with the delivery of water to the City under this  
5 Contract shall be nonreimbursable, and such costs shall be excluded  
6 from CAWCD's repayment obligation.

7 ARTICLE 22  
8 Repayment Contract Controlling

9 22. Pursuant to the Repayment Contract, the United  
10 States has agreed to construct and, in the absence of an approved  
11 Operating Agency, to operate and maintain the works of the Central  
12 Arizona Project and to deliver Central Arizona Project water to the  
13 various subcontractors within CAWCD's service area; and CAWCD has  
14 obligated itself for the payment of various costs, expenses, and  
15 other amounts allocated to CAWCD pursuant to Article 9 of the  
16 Repayment Contract. The City expressly approves and agrees to all  
17 the terms presently set out in the Repayment Contract, or as such  
18 terms may be hereafter amended, and agrees to be bound by the  
19 actions to be taken and the determinations to be made under that  
20 Repayment Contract, except as otherwise provided herein.

21 IN WITNESS WHEREOF, the parties hereto have executed this  
22 Contract No. 9-07-30-W0240 the day and year first above-  
23 written.  
24  
25  
26

THE UNITED STATES OF AMERICA

By

CENTRAL ARIZONA WATER  
CONSERVATION DISTRICT

Attest:

Secretary

By

President

CITY OF PHOENIX, a Municipal  
corporation, MARVIN A.  
ANDREWS, City Manager

Attest:

Clerk

By

Approved  
as to Form:

City Attorney

Exhibit "A"

CAP Master Repayment Contract

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Exhibit "B"

Assignment among RWCD, CAWCD and The United States  
(See Exhibit "12.3." to Agreement)

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Exhibit "C"

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EXHIBIT "3.h.7."

River Water Exchange Contract  
Town of Gilbert, Arizona

Exhibit "3.h.7"  
RIVER WATER EXCHANGE CONTRACT  
Town of Gilbert, Arizona

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Exhibit "3.h.7"  
RIVER WATER EXCHANGE CONTRACT  
Town of Gilbert, Arizona

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Exhibits

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1  
2 UNITED STATES  
3 DEPARTMENT OF THE INTERIOR  
4 BUREAU OF RECLAMATION

5 CONTRACT AMONG THE UNITED STATES,  
6 THE CENTRAL ARIZONA WATER CONSERVATION DISTRICT,  
7 AND THE TOWN OF GILBERT, ARIZONA,  
8 PROVIDING FOR WATER SERVICE

9 ARTICLE 1  
10 Preamble

11 1. THIS CONTRACT, made as of the 12th day of February,  
12 1988, in pursuance of the Salt River Pima-Maricopa Indian Community  
13 Water Rights Settlement Act of 1988, P.L. 100-512, 102 Stat. 2549,  
14 and the Act of June 17, 1902 (32 Stat. 388), and acts amendatory  
15 thereof or supplementary thereto, including but not limited to the  
16 Boulder Canyon Project Act of December 21, 1928 (45 Stat. 1057),  
17 the Colorado River Basin Project Act of September 30, 1968 (82  
18 Stat. 885), as amended, hereinafter referred to collectively as the  
19 "Federal Reclamation Laws," and the various authorities and re-  
20 sponsibilities of the Secretary of the Interior in relation to  
21 Indians and Indian Tribes, as contained in Title 25 U.S.C. and 43  
22 U.S.C. § 1457, among THE UNITED STATES OF AMERICA, acting through  
23 the Secretary of the Interior, the CENTRAL ARIZONA WATER  
24 CONSERVATION DISTRICT, hereinafter referred to as "CAWCD," a multi-  
25 county water conservation district organized under the laws of  
26 Arizona, with its principal place of business in Phoenix, Arizona,  
and the TOWN OF GILBERT, Arizona, hereinafter referred to as the  
"City," with its principal place of business at 119 North Gilbert  
Road, Gilbert, Arizona;

1 WITNESSETH, THAT:

2 ARTICLE 2  
3 Explanatory Recitals

4 2. WHEREAS, the Colorado River Basin Project Act  
5 provides, among other things, that for the purposes of furnishing  
6 irrigation and municipal and industrial water supplies to water  
7 deficient areas of Arizona and western New Mexico through direct  
8 diversion or exchange of water, control of floods, conservation and  
9 development of fish and wildlife resources, enhancement of recrea-  
10 tion opportunities, and for other purposes, the Secretary of the  
11 Interior shall construct, operate, and maintain the Central Arizona  
12 Project; and

13 WHEREAS, pursuant to the provisions of Arizona Revised  
14 Statutes §§ 48-3701, et seq., CAWCD has been organized with the  
15 power to enter into a contract or contracts with the Secretary of  
16 the Interior to accomplish the purposes of Arizona Revised Sta-  
17 tutes, §§ 48-3701, et seq.; and

18 WHEREAS, pursuant to Section 304(b)(1) of the Colorado  
19 River Basin Project Act, the Secretary of the Interior has  
20 determined that it is necessary to effect repayment of the cost of  
21 constructing the Central Arizona Project pursuant to a master  
22 contract and that the United States, together with CAWCD, shall be  
23 a party to contracts that are in conformity with and subsidiary to  
24 the master contract; and

25 WHEREAS, the United States and CAWCD entered into Con-  
26 tract No. 14-06-W-245 dated December 15, 1972, which was amended on

1 December 1, 1988, hereinafter referred to as the "Repayment  
2 Contract," a copy of which is attached hereto as Exhibit "A" and by  
3 this reference made a part hereof, whereby CAWCD agrees to repay to  
4 the United States the reimbursable costs of the Central Arizona  
5 Project allocated to CAWCD; and

6 WHEREAS, the City has entered into a water service  
7 subcontract with the United States and CAWCD for municipal and  
8 industrial water service from water supplies available from the  
9 Central Arizona Project, Contract No. [to be supplied]; and

10 WHEREAS, the United States, the State of Arizona, the  
11 Salt River Pima-Maricopa Indian Community, the Salt River Valley  
12 Water Users' Association, the Salt River Project Agricultural  
13 Improvement and Power District, the Roosevelt Water Conservation  
14 District, the Roosevelt Irrigation District, the Cities of Phoenix,  
15 Scottsdale, Glendale, Mesa, Tempe, and Chandler and the Town of  
16 Gilbert, Arizona, and CAWCD have agreed to permanently settle the  
17 water rights of the Salt River Pima-Maricopa Indian Community and  
18 its members, to finally resolve pending litigation on water rights  
19 and damage claims, and to seek funding for implementation of the  
20 settlement; and

21 WHEREAS, the United States, acting through the Secretary  
22 of the Interior, has both a trust and fiduciary responsibility to  
23 make the Salt River Pima-Maricopa Indian reservation a permanent  
24 Tribal homeland for the Salt River Pima-Maricopa Indian Community;  
25 and

26 . . .



1           WHEREAS, as part of the water rights settlement with the  
2 Salt River Pima-Maricopa Indian Community, the United States is  
3 required to contract with the City for the delivery through Central  
4 Arizona Project facilities of not to exceed six thousand seven  
5 hundred sixty-two (6,762) acre-feet per year of Colorado River  
6 water which was not included in the determination of water supplies  
7 available to the Central Arizona Project, plus certain additional  
8 amounts of Central Arizona Project water to be made available each  
9 year by the Roosevelt Water Conservation District or the Secretary  
10 of the Interior from Central Arizona Project water supplies other-  
11 wise available for agricultural use;

12           NOW, THEREFORE, in consideration of the mutual covenants  
13 herein contained, the parties hereto agree as follows:

14                   ARTICLE 3  
15                   Definitions

16           3.   For purposes of this Contract:

17                   (a) "Agricultural water" shall mean water made  
18 available from the Central Arizona Project for the commercial  
19 production of agricultural crops or livestock, including domestic  
20 use incidental thereto, on tracts of land operated in units of more  
21 than five acres.

22                   (b) "CAWCD's service area" shall mean the area now  
23 included within the Central Arizona Water Conservation District,  
24 consisting of Maricopa, Pinal, and Pima Counties, Arizona, and such  
25 other counties as may hereafter become part of the District, . .  
26 .

1 exclusive of any Indian reservation land lying wholly or partly  
2 within said Counties.

3 (c) "Central Arizona Project" or "CAP" or "project"  
4 shall mean the project and works authorized by Section 301(a) of  
5 the Colorado River Basin Project Act and constructed by the United  
6 States pursuant to the provisions of said Act.

7 (d) "Cities" shall mean the City of Chandler, the  
8 City of Glendale, the City of Scottsdale, the City of Tempe, the  
9 City of Mesa, the City of Phoenix, and the Town of Gilbert.

10 (e) "Colorado River water" shall mean that Colorado  
11 River mainstream water to be delivered to the City under this  
12 Contract which has a Colorado River priority pre-dating September  
13 30, 1968.

14 (f) "Contracting Officer" shall mean the Secretary  
15 or his authorized designee acting on his behalf.

16 (g) "Distribution works" shall mean those facili-  
17 ties constructed or used for the purpose of distributing water to  
18 or within the City's service area after said water has been trans-  
19 ported through the water supply system to the City's project  
20 turnout(s).

21 (h) "Ground water recharge" shall mean the recharge  
22 of water pursuant to title 45, chapter 2, article 13, Arizona  
23 Revised Statutes, or the underground storage and recovery of water  
24 pursuant to title 45, chapter 3, Arizona Revised Statutes, or as  
25 said statutes may hereafter be amended or revised.

26 . . .

1 (i) "Miscellaneous water" shall mean water made  
2 available from the Central Arizona Project, or by exchange for such  
3 water, for recreational and fish and wildlife purposes at other  
4 than project facilities, and which has a lesser priority of use  
5 than agricultural water.

6 (j) "Municipal and industrial water," hereinafter  
7 sometimes referred to as "M&I water," shall mean water made avail-  
8 able from the Central Arizona Project other than agricultural water  
9 and miscellaneous water.

10 (k) "Notice of completion" shall mean the notice  
11 which the Contracting Officer issues to CAWCD to announce the  
12 substantial completion of the water supply system, or of those  
13 features of the project which include or comprise the water supply  
14 system, or of the entire project if constructed concurrently,  
15 thereby initiating payments therefor allocated to CAWCD.

16 (l) "OM&R" shall mean the care, operation, mainte-  
17 nance, and replacement of project works.

18 (m) "Operating Agency" shall mean the entity or  
19 entities authorized to assume OM&R responsibility of transferred  
20 works and approved for that purpose by the Contracting Officer.

21 (n) "Assignment Water" shall mean that water to be  
22 delivered to the City under this Contract which is made available  
23 to the City by the Roosevelt Water Conservation District ("RWCD")  
24 or the Secretary of the Interior pursuant to the Assignment, dated  
25 as of February 12, 1988, among the United States, CAWCD,  
26 . . . .

1 RWCD, and the Cities. A copy of the Assignment is attached hereto  
2 as Exhibit "B" and by this reference made a part hereof.

3 (o) "Project works" shall mean the principal works  
4 described in Section 301(a) of the Colorado River Basin Project  
5 Act, and appurtenances thereto, or as modified pursuant to the  
6 Repayment Contract, together with lands, interests in lands, and  
7 rights-of-way for such works and appurtenances.

8 (p) "Return flow" shall mean all agricultural, M&I,  
9 and miscellaneous waste water, seepage, and ground water which  
10 originates or results from Colorado River water or Assignment Water  
11 as defined herein, but shall not include any water delivered  
12 through the project works for ground water recharge purposes.

13 (q) "Secretary" shall mean the Secretary of the  
14 Interior of the United States or his duly authorized  
15 representative.

16 (r) "Settlement Agreement" shall mean the Agreement  
17 dated as of February 12, 1988, among the United States of America,  
18 the State of Arizona, the Salt River Pima-Maricopa Indian  
19 Community, the Salt River Project Agricultural Improvement and  
20 Power District, the Salt River Valley Water Users' Association,  
21 RWCD, the Roosevelt Irrigation District, the Cities, and CAWCD.

22 (s) "Subcontractor" shall mean any irrigation  
23 district, municipality, individual, or any other entity which  
24 enters into a water service subcontract with the United States and  
25 CAWCD in furtherance of the provisions of the Colorado River Basin  
26 Project Act.

1 (t) "Time of shortage" shall mean a calendar year  
2 for which the Secretary determines that a shortage exists pursuant  
3 to Section 301(b) of the Colorado River Basin Project Act, such  
4 that there is not sufficient water available for delivery from the  
5 Central Arizona Project in that year (after reduction in  
6 consideration of anticipated losses due to evaporation and seepage  
7 estimated to occur during transportation of such water through the  
8 water supply system and exclusive of "Colorado River water" as  
9 defined herein) to meet fully the entitlements of Indian contrac-  
10 tors and non-Indian municipal and industrial subcontractors of  
11 Central Arizona Project water supplies.

12 (u) "Transferred works" shall mean such features of  
13 the project or such facilities of the water supply system as to  
14 which OM&R responsibility is transferred from the United States to  
15 the Operating Agency.

16 (v) "Water supply system" shall mean the Navajo  
17 Project, Havasu Pumping Plant, the Granite Reef, Salt-Gila, and  
18 Tucson aqueducts and associated pumping plants and appurtenant  
19 works, but not including Tucson Terminal Storage or any  
20 distribution works.

21 (w) "Year" shall mean the period between January 1  
22 through the next succeeding December 31.

23 ARTICLE 4  
24 Term

25 4. This Contract shall become effective upon its execu-  
26 tion by the parties hereto and its term shall be perpetual.

ARTICLE 5  
Delivery of Water

5. (a) The United States shall obtain rights to 22,000 acre-feet of annual consumptive use of mainstream Colorado River water in Arizona with a contractual priority pre-dating September 30, 1968, and which was not included in the determination of the water supplies available to the Central Arizona Project. The Secretary shall make such Colorado River water available for delivery as provided herein.

(b) Except as provided in Article 8 hereof, commencing with the year in which the Secretary issues notice of completion or the enforceability date of the Settlement Agreement, whichever is later, and for each year thereafter, the City shall be entitled to Colorado River water and Assignment Water in amounts not exceeding the following:

(i) Colorado River water -- 6,762 acre-feet;  
and

(ii) Assignment Water made available to the City by RWCD pursuant to Paragraph 2 of the Assignment attached hereto as Exhibit "B" -- 1,537 acre-feet; or

(iii) Assignment Water made available to the City by the Secretary pursuant to Paragraph 3 of the Assignment attached hereto as Exhibit "B" -- 922 acre-feet.

(c) The City's annual entitlement to Colorado River water under Subarticle 5(b)(i) hereof shall be deemed to be met if initially made available for delivery at CAWCD's project delivery

1 point on the Colorado River, and shall be subject to reduction on  
2 account of losses by reason of evaporation and seepage occurring  
3 during the transportation of such water through the water supply  
4 system to the City's project delivery point. Said losses occurring  
5 on the City's Colorado River water supplies shall be determined by  
6 the Contracting Officer or the Operating Agency, but shall not  
7 exceed the City's pro rata share of losses as compared to losses  
8 due to evaporation and seepage occurring during transportation  
9 through the water supply system of all water supplies delivered  
10 during a year.

11 (d) The City's entitlement to Assignment Water  
12 under Subparagraphs 5(b)(ii) and 5(b)(iii) hereof, and its rights  
13 and obligations with respect to such Assignment Water, shall be  
14 subject to the terms and conditions of the Assignment attached  
15 hereto as Exhibit "B".

16 (e) The City's entitlement to Colorado River water  
17 and Assignment Water under this Contract shall be in addition to  
18 the City's entitlement to Central Arizona Project water for municipi-  
19 pal and industrial use under the City's Central Arizona Project M&I  
20 water service subcontract (Contract No. [to be supplied]).

21 (f) During such periods as it operates and main-  
22 tains the Central Arizona Project, the United States shall deliver  
23 Colorado River water and Assignment Water to which the City is  
24 entitled under this Contract through the water supply system.  
25 Subject to the provisions of Subarticles 5(c) and 5(d) hereof, the  
26 United States shall use all reasonable diligence to make available

1 to the City the quantity of Colorado River water and Assignment  
2 Water specified in the schedule submitted by the City in accordance  
3 with Article 6 hereof. After transfer of OM&R responsibility to  
4 the Operating Agency, the United States shall make deliveries of  
5 Colorado River water and Assignment Water to the Operating Agency  
6 which shall make subsequent delivery of such water to the City as  
7 provided herein.

8 (g) The obligation of the United States and the  
9 Operating Agency to deliver Colorado River water and Assignment  
10 Water to the City under this Contract is subject to:

11 (i) The availability of such water for use in  
12 Arizona under the provisions of the Colorado River Compact, exe-  
13 cuted November 24, 1922; the Boulder Canyon Project Act, 45 Stat.  
14 1057, dated December 21, 1928; the Colorado River Basin Project  
15 Act, 82 Stat. 885, dated September 30, 1968, the contract between  
16 the United States and the State of Arizona dated February 9, 1944,  
17 the Opinion of the Supreme Court of the United States in the case  
18 of Arizona v. California et al., rendered June 3, 1963, 373 U.S.  
19 546, and the Decree of that court in said case, entered March 9,  
20 1964, 376 U.S. 340, as amended on February 28, 1966, at 383 U.S.  
21 268, and supplemented on January 9, 1979, at 439 U.S. 419, or as  
22 hereafter modified;

23 (ii) Executive A, Seventy-Eighth Congress,  
24 Second Session, a treaty between the United States of America and  
25 the United Mexican States, signed at Washington on February 3,  
26 1944, relating to the utilization of the waters of the Colorado and



1 Tijuana Rivers and of the Rio Grande from Fort Quitman, Texas, to  
2 the Gulf of Mexico, and Executive H, Seventy-eighth Congress,  
3 Second Session, a protocol signed at Washington on November 14,  
4 1944, supplementary to the Treaty, all hereinafter referred to as  
5 the Mexican Water Treaty;

6 (iii) The express understanding and agreement by  
7 the City that this Contract is subject to the condition that Hoover  
8 Dam and Lake Mead shall be used: first, for river regulation,  
9 improvement of navigation, and flood control; second, for irriga-  
10 tion and domestic uses and satisfaction of present perfected rights  
11 in pursuance of Article VIII of the Colorado River Compact approved  
12 by Section 13(a) of the Boulder Canyon Project Act; and third, for  
13 power; and furthermore, that this Contract is made upon the express  
14 condition and with the express covenant that all rights hereunder  
15 shall be subject to and controlled by the Colorado River Compact  
16 and that the United States and City shall observe and be subject to  
17 and controlled by said Colorado River Compact and Boulder Canyon  
18 Project Act in the construction, management, and operation of  
19 Hoover Dam, Lake Mead, canals and other works, and the storage,  
20 diversion, delivery, and use of water to be delivered to City here-  
21 under; and

22 (iv) The right of the United States or the  
23 Operating Agency temporarily to discontinue or reduce the amount of  
24 water to be delivered hereunder whenever such discontinuance or  
25 reduction is made necessary for purposes of investigations, in-  
26 spections, replacements, maintenance, or repairs to any works what-

1 soever affecting, utilized or, in the opinion of the Secretary or  
2 the Operating Agency, necessary for delivery of water hereunder, it  
3 being understood that so far as feasible the United States or the  
4 Operating Agency will (i) do so during periods of low water demands  
5 and (ii) give reasonable notice in advance of such temporary dis-  
6 continuance or reduction.

7 (h) Subject to the terms and conditions herein, the  
8 United States and the Operating Agency shall be obligated to  
9 deliver Colorado River water and Assignment Water to the City with-  
10 out regard as to whether or not the Salt River Pima-Maricopa Indian  
11 Community exercises its right to use any or all of the exchange  
12 water referred to in Paragraph 12 of the Settlement Agreement.

13 (i) Delivery and use of Colorado River water and  
14 Assignment Water under this Contract is further conditioned on the  
15 following, and the City hereby agrees that:

16 (i) All uses of Colorado River water,  
17 Assignment Water and return flow shall be consistent with Arizona  
18 water law unless such law is inconsistent with the Congressional  
19 directives applicable to the Central Arizona Project.

20 (ii) The system or systems through which  
21 Colorado River water and Assignment Water for municipal and  
22 industrial (including ground water recharge) purposes is conveyed  
23 after delivery to the City shall consist of pipelines, canals,  
24 distribution systems, or other conduits provided and maintained  
25 with linings adequate in the Contracting Officer's judgment to  
26 prevent excessive conveyance losses.

1                   (iii) The City shall not pump, or within its  
2 legal authority, permit others to pump ground water from within the  
3 exterior boundaries of the City's service area, which has been  
4 delineated on a map filed with the Contractor and approved by the  
5 Contractor and the Contracting Officer, for use outside of said  
6 service area unless such pumping is permitted under Title 45,  
7 Chapter 2, Arizona Revised Statutes, as it may be amended from time  
8 to time, and the Contracting Officer, CAWCD, and the City shall  
9 agree, or shall have previously agreed, that a surplus of ground  
10 water exists and drainage is or was required; Provided, however,  
11 That such pumping may be approved by the Contracting Officer and  
12 CAWCD, and approval shall not be unreasonably withheld, if such  
13 pumping is in accord with the Colorado River Basin Project Act and  
14 upon submittal by the City of a written certification from the  
15 Arizona Department of Water Resources or its successor agency that  
16 the pumping and transportation of ground water is in accord with  
17 Title 45, Chapter 2, Arizona Revised Statutes, as it may be amended  
18 from time to time.

19                   (iv) The City shall not sell or otherwise  
20 dispose of or permit the sale or other disposition of Colorado  
21 River water and Assignment Water for use outside of Maricopa,  
22 Pinal, and Pima Counties; Provided, however, That this does not  
23 prohibit exchanges of Colorado River water and Assignment Water  
24 covered by separate agreements; and Provided, further, That this  
25 does not prohibit effluent exchanges with Indian tribes pursuant to  
26 . . . .

1 Article 6.2 of the City's Central Arizona Project M&I water service  
2 subcontract (Contract No. [to be supplied]).

3 (j) (i) Colorado River water and Assignment Water  
4 scheduled for delivery in any year under this contract may be used  
5 by the City or resold or exchanged by the City pursuant to appro-  
6 priate agreements approved by the Contracting Officer and CAWCD.  
7 If said water is resold or exchanged by the Contractor for an  
8 amount in excess of that which the City is obligated to pay under  
9 this Contract, the excess amount shall be paid forthwith by the  
10 City to CAWCD for application against the CAWCD's repayment obliga-  
11 tion to the United States; Provided, however, That the Contractor  
12 shall be entitled to recover actual costs of transportation, treat-  
13 ment, and distribution, including but not limited to OM&R costs.

14 (ii) Colorado River water and Assignment Water  
15 scheduled for delivery in any year under this Contract that cannot  
16 be used, resold, or exchanged by the City may be made available by  
17 the Contracting Officer or the Operating Agency to other users. If  
18 such water is sold to or exchanged with other users, the City shall  
19 be relieved of its payments hereunder only to the extent of the  
20 amount paid to the Contracting Officer and the Operating Agency by  
21 such other users, but not to exceed the amount the City is  
22 obligated to pay under this Contract for said water.

23 (iii) In the event the City, the Contracting  
24 Officer, or the Operating Agency is unable to sell any portion of  
25 the Colorado River water or Assignment Water scheduled for delivery  
26 by the City but not required by the City in any year, the City

1 shall be relieved of the pumping energy portion of the OM&R charges  
2 associated with the undelivered water as determined by the  
3 Contracting Officer or the Operating Agency.

4 (k) The City shall have the right to use Colorado  
5 River water and Assignment Water received under this Contract for  
6 any purpose consistent with Arizona law, including ground water  
7 recharge.

8 ARTICLE 6  
9 Procedure for Ordering Water

10 6. At least six months prior to the delivery of  
11 Colorado River water and Assignment Water to the City under this  
12 Contract, the Contracting Officer or the Operating Agency shall  
13 issue a written notice of availability of such water to the City.  
14 The City will, in accordance with the procedures hereinafter set  
15 out, submit written schedules to the Contracting Officer and the  
16 Operating Agency showing the quantities of (i) Colorado River water  
17 and (ii) Assignment Water requested for delivery. The City shall  
18 submit a schedule which requests the delivery of all Assignment  
19 Water available to it. If the first notice of availability of  
20 water is issued to the City by the Contracting Officer or the  
21 Operating Agency prior to June 1 of any year, the first schedule  
22 for the balance of said year shall be submitted to the Contracting  
23 Officer and the Operating Agency within 30 days after the City's  
24 receipt of such notice. If such notice is issued after June 1 of  
25 any year, the first schedule shall be submitted to the Contracting  
26 Officer and the Operating Agency within 30 days after the City's

1 receipt of such notice and shall cover the balance of such year and  
2 the next succeeding year. Thereafter, the amounts, times, and  
3 rates of delivery of water to the City during any year shall be in  
4 accordance with a water delivery schedule for that year, such sche-  
5 dule to be determined in the following manner:

6 (a) On or before June 1 of each year, the Con-  
7 tracting Officer shall announce (i) the amount of Colorado River  
8 water and (ii) the amount of Assignment Water available for  
9 delivery during the following year in a written notice to the  
10 Operating Agency and the City.

11 (b) On or before October 1 of each year, the City  
12 shall submit in writing to the Operating Agency and the Contracting  
13 Officer a water delivery schedule indicating the amounts of  
14 (i) Colorado River water and (ii) Assignment Water desired by the  
15 City during each month of the following year along with a pre-  
16 liminary schedule of water desired for the succeeding 2 years. The  
17 City shall schedule for delivery each year all Assignment Water  
18 available to it for delivery during that year.

19 (c) Upon receipt of such schedule, the Contracting  
20 Officer and the Operating Agency shall review it and, after con-  
21 sultation with the City, shall make only such modifications to the  
22 schedule as are necessary to ensure that the amounts, times, and  
23 rates of delivery to the City are consistent with the delivery  
24 capability of the project, considering, among other things, the  
25 availability of water and the delivery schedules of all subcon-  
26 tractors of Central Arizona Project water service; Provided, That

1 this provision shall not be construed to reduce annual deliveries  
2 to the City.

3 (d) On or before November 15 of each year, the  
4 Contracting Officer or the Operating Agency shall determine and  
5 furnish to the City the water delivery schedule for the next  
6 succeeding year which shall show the amounts of (i) Colorado River  
7 water and (ii) Assignment Water to be delivered to the City during  
8 each month of that year.

9 (e) The monthly water delivery schedules may be  
10 amended by the Contracting Officer or the Operating Agency upon the  
11 City's written request. Proposed amendments shall be submitted by  
12 the City within a reasonable time before the desired change is to  
13 become effective, and shall be subject to review and modification  
14 by the Contracting Officer or the Operating Agency in like manner  
15 as the schedule itself.

16 (f) In no event shall the Contracting Officer or  
17 the Operating Agency be required to deliver in any one month (i) an  
18 amount of Colorado River water greater than eleven percent (11%) of  
19 the City's maximum annual entitlement to Colorado River water under  
20 Subarticle 5(b)(i) of this Contract or (ii) an amount of Assignment  
21 Water greater than eleven percent (11%) of the City's maximum  
22 annual entitlement to Assignment Water under Subarticle 5(b)(ii) or  
23 5(b)(iii) of this Contract; Provided, however, That the Contracting  
24 Officer or the Operating Agency may deliver a greater percentage of  
25 such water in any month if such increased delivery is compatible  
26 with the overall delivery of Central Arizona Project water to CAP

1 subcontractors as determined by the Contracting Officer and the  
2 Operating Agency, and if the City agrees to accept such increased  
3 deliveries.

4 ARTICLE 7  
5 Points of Delivery--Measurement and  
6 Responsibility for Distribution of Water

7 7. (a) All water to be furnished to the City pursuant  
8 to this Contract shall be delivered at turnouts to be constructed  
9 by the United States at such point(s) on the water supply system as  
10 may be agreed upon in writing by the Contracting Officer and CAWCD,  
11 after consultation with the City.

12 (b) Unless the United States and the City agree by  
13 contract to the contrary, the City shall construct and install, at  
14 its sole cost and expense, connection facilities required to take  
15 and convey such water from the turnouts to the City's service  
16 area. The City shall furnish, for approval of the Contracting  
17 Officer, drawings showing the construction to be performed by the  
18 Contractor within the water supply system right-of-way six months  
19 before starting said construction. The facilities may be in-  
20 stalled, operated, and maintained on the water supply system right-  
21 of-way subject to such reasonable restrictions and regulations as  
22 to type, location, method of installation, operation, and  
23 maintenance as may be prescribed by the Contracting Officer.

24 (c) All water delivered to the City pursuant to  
25 this Contract shall be measured with equipment furnished and  
26 installed by the United States and operated and maintained by the  
United States or by the Operating Agency. Upon the request of the



1 City or the Operating Agency, the accuracy of such measurements  
2 shall be investigated by the Contracting Officer or by the Operat-  
3 ing Agency and the City, and any errors which may be mutually  
4 determined to have occurred therein shall be adjusted; Provided,  
5 That in the event the parties cannot agree on the required adjust-  
6 ment, the Contracting Officer's determination shall be conclusive.

7 (d) Neither the United States nor the Operating  
8 Agency shall be responsible for the control, carriage, handling,  
9 use, disposal, or distribution of water beyond the delivery  
10 point(s) agreed to pursuant to Subarticle 7(a). The City shall  
11 hold the United States and the Operating Agency harmless on account  
12 of damage or claim of damage of any nature whatsoever for which  
13 there is legal responsibility, including property damage, personal  
14 injury, or death arising out of or connected with the City's  
15 control, carriage, handling, use, disposal, or distribution of  
16 water beyond said delivery point(s).

17 (e) In addition to the right of the United States  
18 under Subarticle 8.3(a)(iv) of the Repayment Contract temporarily  
19 to discontinue or reduce the amount of water to be delivered  
20 through the Central Arizona Project, the United States or the  
21 Operating Agency may, after consultation with the City, temporarily  
22 discontinue or reduce the quantity of water to be furnished to the  
23 City as herein provided for the purpose of investigation, inspec-  
24 tion, maintenance, repair, or replacement of any CAP facilities or  
25 any part thereof necessary for the furnishing of water to the City  
26 under this Contract, but so far as feasible the United States or

1 the Operating Agency shall coordinate any such discontinuance or  
2 reduction with the City and shall give the City due notice in  
3 advance of such temporary discontinuance or reduction, except in  
4 case of emergency, in which case no notice need be given. Neither  
5 the United States, its officers agents, and employees, nor the  
6 Operating Agency, its officers, agents, and employees, shall be  
7 liable for damages when, for any reason whatsoever, any such  
8 temporary discontinuance or reduction in delivery of water  
9 occurs. If any such discontinuance or temporary reduction results  
10 in deliveries to the City of less water than what has been paid for  
11 in advance, the City shall be entitled to be reimbursed for the  
12 appropriate proportion of advance payments of OM&R charges prior to  
13 the date of the City's next payment of OM&R charges or the City may  
14 be given credit toward the next payment of OM&R charges if the City  
15 should so desire.

#### 16 ARTICLE 8

#### 17 Priority in Case of Shortage

18 8. (a) Subject to the provisions of Section 304(e) of  
19 the Colorado River Basin Project Act, in the event of a shortage of  
20 the water supplies available to the Central Arizona Project, as  
21 determined by the Contracting Officer after consultation with  
22 CAWCD, Assignment Water furnished to the City under this Contract  
23 shall be subject to reduction in the same manner and to the same  
24 extent as agricultural water under Central Arizona Project  
25 agricultural water service subcontracts.

26 . . .

1 (b) In a time of shortage, the City's entitlement  
2 to Colorado River water under Subarticle 5(b)(i) of this Contract  
3 shall be determined by the following formula:

4 City's entitlement to  
5 Colorado River water in a time of shortage = 
$$\frac{[(X+Y) \cdot (A+B)/(C+D)] - [(X/D) \cdot A]^*}{1}$$

6 Where: X = the City's entitlement to Central Arizona  
7 Project water for M&I water use under Article  
8 4.12 of Contract No. [to be supplied] as the  
same may be amended or supplemented from time  
to time;

9 Y = 7,991 acre-feet;

10 A = the total amount of water available from the  
11 Central Arizona Project for non-Indian M&I  
12 water use (after reduction on account of losses  
13 due to evaporation and seepage estimated to  
14 occur during transportation of such water  
15 through the water supply system and exclusive  
of "Colorado River water" as defined herein),  
as determined by the Contracting Officer in  
accordance with the method outlined in the  
Record of Decision of the Secretary published  
in the Federal Register on March 24, 1983;

16 B = the total amount of Colorado River water  
17 available to the Cities pursuant to this  
18 Contract with the Town of Gilbert and like  
19 contracts with the other Cities (after reduc-  
tion on account of losses due to evaporation  
and seepage estimated to occur during trans-  
portation of such water through the water  
supply system);

20 C = 26,000 acre-feet.

21 D = the sum of all non-Indian municipal and indus-  
22 trial subcontractors' entitlements to Central  
23 Arizona Project water for M&I water use under  
24 Article 4.12 of all non-Indian CAP municipal  
and industrial subcontracts, as the same may be  
amended or supplemented from time to time;

25 \* It is the intent of the parties that this calculation be  
26 performed in a manner which is consistent with the method of

1 calculation exemplified in Tables 1 and 2 attached hereto as  
2 Exhibit "C".

3 (c) Notwithstanding the provisions of Subarticle  
4 5(c) of this Contract, the City's entitlement to Colorado River  
5 water, as determined in accordance with the formula set forth in  
6 Subarticle 8(b) hereof, shall be made available to the City at the  
7 City's project turnout(s).

8 (d) In a time of shortage, any Colorado River water  
9 available from the 22,000 acre-feet to be obtained by the United  
10 States pursuant to Subarticle 5(a) hereof in excess of that neces-  
11 sary to satisfy the entitlement of the City under Subarticle 8(b)  
12 of this Contract and the entitlements of the other Cities under  
13 Subarticle 8(b) of like contracts with such Cities shall be made  
14 available by the Secretary for delivery to non-Indian CAP municipal  
15 and industrial subcontractors other than the Cities pursuant to the  
16 Central Arizona Project M&I water service subcontracts with such  
17 subcontractors, pro rata in proportion to each such subcontractor's  
18 entitlement to Central Arizona Project water for M&I use under such  
19 subcontractor's Central Arizona Project M&I water service sub-  
20 contract. The manner in which this Subarticle 8(d) is intended to  
21 operate is illustrated by Tables 1 and 2 attached hereto as Exhibit  
22 "C".

23 ARTICLE 9  
Payments

24 9. (a) Subject to the provisions of Article 11 hereof,  
25 the City shall pay in advance for CAP OM&R costs estimated to be  
26 incurred by the United States or the Operating Agency in delivering

1 Colorado River water and Assignment Water to the City pursuant to  
2 this Contract. At least 6 months prior to the first delivery of  
3 such water, or as soon thereafter as is practicable, the Con-  
4 tracting Officer or the Operating Agency shall furnish the City  
5 with an estimate of the City's share of OM&R costs to the end of  
6 the initial year of water delivery and an estimate of such costs  
7 for the following year. Within a reasonable time of the receipt of  
8 said estimates, as determined by the Contracting Officer or the  
9 Operating Agency, but prior to the delivery of water, the City  
10 shall advance to the Contracting Officer or the Operating Agency  
11 its share of such estimated costs to the end of the initial month  
12 of water delivery and without further notice or demand shall on or  
13 before the first day of each succeeding month of the initial year  
14 of water delivery and the following year advance to the Contracting  
15 Officer or the Operating Agency in equal monthly installments the  
16 City's share of such estimated costs. Advances of monthly payments  
17 for each subsequent year shall be made by the City to the  
18 Contracting Officer or the Operating Agency on the basis of annual  
19 estimates to be furnished by the Contracting Officer or the  
20 Operating Agency on or before June 1 preceding each said subsequent  
21 year, and the advances of payments for said estimated costs shall  
22 be due and payable in equal monthly payments on or before the first  
23 day of each month of the subsequent year. Differences between  
24 actual OM&R costs and estimated OM&R costs shall be adjusted in the  
25 next succeeding annual estimates; Provided, however, That if in the  
26 opinion of the Contracting Officer or the Operating Agency the

1 amount of any annual OM&R estimate is likely to be insufficient to  
2 cover the above-mentioned costs during such period, the Contracting  
3 Officer or the Operating Agency may increase the annual estimate of  
4 the City's OM&R costs by written notice thereof to the City, and  
5 the City shall forthwith increase its remaining monthly payments in  
6 such year to the Contracting Officer or the Operating Agency by the  
7 amount necessary to cover the estimated insufficiency. All esti-  
8 mates of OM&R costs shall be accompanied by data and computations  
9 relied on by the Contracting Officer or the Operating Agency in  
10 determining the amounts of the estimated OM&R costs and shall be  
11 subject to joint review by the City and the Contracting Officer or  
12 the Operating Agency.

13 (b) Other than as provided for in Exhibit "B"  
14 hereto with respect to Assignment Water, the City shall not be  
15 required to pay any water service capital charge(s) with respect to  
16 Colorado River water or Assignment Water to which the City is  
17 entitled under this Contract.

18 (c) Payment of all OM&R charges becoming due here-  
19 under prior to or on the dates stipulated in Subarticle 9(a) hereof  
20 is a condition precedent to receiving water under this Contract.

21 (d) All payments to be made to the Operating Agency  
22 or the United States under Subarticle 9(a) hereof shall be made by  
23 the City as such payments fall due from revenues legally available  
24 to the City for such payment from the sale of water to its water  
25 users and from any and all other sources which might be legally  
26 available; Provided, That no portion of the general taxing

1 authority of the City, nor its general funds, nor funds from ad  
2 valorem taxes are obligated by the provisions of this Contract, nor  
3 shall such sources be liable for any payments, contributions, or  
4 other costs pursuant to this Contract, or to satisfy any obligation  
5 hereunder unless duly and lawfully allocated and budgeted for such  
6 purpose by the City for the applicable budget year; and Provided,  
7 further, That no portion of this Contract shall ever be construed  
8 to create an obligation superior in lien to or on a parity with the  
9 Cities' revenue bonds now or hereafter issued. The City shall levy  
10 and impose such necessary water service charges and rates and use  
11 all the authority and resources available to it to collect all such  
12 necessary water service charges and rates in order that the City  
13 may meet its obligations hereunder and make in full all payments  
14 required under this Contract on or before the date such payments  
15 become due.

16 ARTICLE 10  
17 Loss of Entitlement

18 10. The City shall have no right to delivery of Colorado  
19 River water or Assignment Water under this Contract during any  
20 period in which the City may be in arrears in the payment of any  
21 charges due the United States or the Operating Agency. The Con-  
22 tracting Officer or the Operating Agency may sell to another entity  
23 any water determined to be available under the City's entitlement  
24 for which payment is in arrears; Provided, however, That, except as  
25 provided to the contrary in Exhibit "B" hereto, the City may regain  
26 the right to use any unsold portion of the water determined to be

1 available under the City's original entitlement upon (i) payment of  
2 all delinquent charges plus any difference between the contractual  
3 obligation and the price received in the sale of the water by the  
4 Contracting Officer or Operating Agency and (ii) payment of charges  
5 for the current period.

6 ARTICLE 11  
7 Refusal to Accept Delivery

8 11. In the event the City fails or refuses in any year  
9 to accept delivery of the quantity of water available for delivery  
10 to and required to be scheduled by it pursuant to this Contract, or  
11 in the event the City in any year fails to submit a schedule for  
12 delivery as provided in Article 6 hereof, said failure or refusal  
13 shall not relieve the City of its obligation to make the payments  
14 required in this Contract.

15 ARTICLE 12  
16 Charges for Delinquent Payments

17 12. (a) The City shall be subject to interest,  
18 administrative, and penalty charges on delinquent installments or  
19 payments. When a payment is not received by the due date, the City  
20 shall pay an interest charge for each day the payment is delinquent  
21 beyond the due date. When a payment becomes 60 days delinquent,  
22 the City shall pay an administrative charge to cover additional  
23 costs of billing and processing the delinquent payment. When a  
24 payment is delinquent 90 days or more, the City shall pay an addi-  
25 tional penalty charge of 6 percent per year for each day the  
26 payment is delinquent beyond the due date. Further, the City shall

. . .



1 pay any fees incurred for debt collection services associated with  
2 a delinquent payment.

3 (b) The interest charge rate shall be the greater  
4 of the rate prescribed quarterly in the Federal Register by the  
5 Department of the Treasury for application to overdue payments, or  
6 the interest rate of 0.5 percent per month prescribed by Section 6  
7 of the Reclamation Project Act of 1939 (Public Law 76-260). The  
8 interest charge rate shall be determined as of the due date and  
9 remain fixed for the duration of the delinquent period.

10 (c) When a partial payment on a delinquent account  
11 is received, the amount received shall be applied, first to the  
12 penalty, second to the administrative charges, third to the accrued  
13 interest, and finally to the overdue payment.

14 ARTICLE 13  
15 Secretarial Control of Return Flow

16 13. (a) The Secretary reserves the right to capture all  
17 return flow flowing from the exterior boundaries of CAWCD's service  
18 area as a source of supply and for distribution to and use of the  
19 Central Arizona Project to the fullest extent practicable. The  
20 Secretary also reserves the right to capture for CAP use return  
21 flow which originates or results from water contracted for from the  
22 Central Arizona Project within the boundaries of CAWCD's service  
23 area if, in his judgment, such return flow is not being put to a  
24 beneficial use. The City may recapture and reuse or sell its  
25 return flow; Provided, however, That such return flow may not be  
26 sold for use outside Maricopa, Pinal, and Pima Counties; and

1 Provided, further, That this does not prohibit effluent exchanges  
2 with Indian tribes pursuant to Article 6.2 of the City's Central  
3 Arizona Project M&I water service subcontract (Contract No. [to be  
4 supplied]). The City shall, at least 60 days in advance of any  
5 proposed sale of such water, furnish the following information in  
6 writing to the Contracting Officer and CAWCD:

7 (i) The name and address of the prospective  
8 buyer.

9 (ii) The location and proposed use of the  
10 return flow.

11 (iii) The price to be charged for the return  
12 flow.

13 (b) The price charged for the return flow may cover  
14 the cost incurred by the City for Colorado River water and  
15 Assignment Water plus the cost required to make the return flow  
16 usable. If the price received for the return flow is greater than  
17 the costs incurred by the City, as described above, the excess  
18 amount shall be forthwith paid by the City to the CAWCD for appli-  
19 cation against CAWCD's repayment obligation to the United States.  
20 Costs required to make return flow usable shall include but not be  
21 limited to capital costs and OM&R costs including transportation,  
22 treatment, and distribution, and the portion thereof which may be  
23 retained by the City shall be subject to the advance approval of  
24 CAWCD and the Contracting Officer.

25 (c) Any return flow captured by the United States  
26 and determined by the Contracting Officer and CAWCD to be suitable

1 and available for use by the City may be delivered by the United  
2 States or Operating Agency to the City as a part of the water  
3 supply for which the City has subcontracted pursuant to Contract  
4 No. [to be supplied]), and such water shall be accounted and paid  
5 for pursuant to the provisions thereof.

6 (d) All capture, recapture, use, reuse, and sale of  
7 return flow under this article shall be in accord with Arizona  
8 water law unless such law is inconsistent with the Congressional  
9 directives applicable to the Central Arizona Project.

10 ARTICLE 14  
11 Water and Air Pollution Control

12 14. The City, in carrying out this Contract, shall  
13 comply with all applicable water and air pollution laws and regu-  
14 lations of the United States and the State of Arizona and shall  
15 obtain all required permits or licenses from the appropriate  
16 Federal, State, or local authorities.

17 ARTICLE 15  
18 Quality of Water

19 15. The operation and maintenance of project facilities  
20 shall be performed in such manner as is practicable to maintain the  
21 quality of water made available through such facilities at the  
22 highest level reasonably attainable as determined by the Contract-  
23 ing Officer. Neither the United States nor the Operating Agency  
24 warrants the quality of water and is under no obligation to con-  
25 struct or furnish water treatment facilities to maintain or better  
26 the quality of water. The City waives its right to make a claim  
against the United States, the Operating Agency, or any subcon-

1 tractor because of changes in water quality caused by the com-  
2 mingling of water to be delivered under this Contract with other  
3 water.

4 ARTICLE 16  
5 Equal Opportunity

6 16. During the performance of this Contract, the City  
7 agrees as follows:

8 (a) The City will not discriminate against any  
9 employee or applicant for employment because of race, color,  
10 religion, sex, or national origin. The City will take affirmative  
11 action to ensure that applicants are employed, and that employees  
12 are treated during employment, without regard to their race, color,  
13 religion, sex, or national origin. Such action shall include, but  
14 not be limited to the following: employment, upgrading, demotion,  
15 or transfer; recruitment or recruitment advertising; layoff or  
16 termination; rates of pay or other forms of compensation; and  
17 selection for training, including apprenticeship. The City agrees  
18 to post in conspicuous places, available to employees and appli-  
19 cants for employment, notices to be provided by the Contracting  
20 Officer setting forth the provisions of this nondiscrimination  
21 clause.

22 (b) The City will, in all solicitations or adver-  
23 tisements for employees placed by or on behalf of the City, state  
24 that all qualified applicants will receive consideration for  
25 employment without discrimination because of race, color, religion,  
26 sex, or national origin.

1 (c) The City will send to each labor union or  
2 representative of workers with which it has a collective bargaining  
3 agreement or other contract or understanding, a notice, to be pro-  
4 vided by the Contracting Officer, advising said labor union or  
5 workers' representative of the City's commitments under Section 202  
6 of Executive Order No. 11246 of September 24, 1965, as amended, and  
7 shall post copies of the notice in conspicuous places available to  
8 employees and applicants for employment.

9 (d) The City will comply with all provisions of  
10 Executive Order No. 11246 of September 24, 1965, as amended, and of  
11 the rules, regulations, and relevant orders of the Secretary of  
12 Labor.

13 (e) The City will furnish all information and  
14 reports required by said amended Executive Order and by the rules,  
15 regulations, and orders of the Secretary of Labor, or pursuant  
16 thereto, and will permit access to its books, records, and accounts  
17 by the Contracting Officer and the Secretary of Labor for purposes  
18 of investigation to ascertain compliance with such rules, regula-  
19 tions, and orders.

20 (f) In the event of the City's noncompliance with  
21 the nondiscrimination clauses of this Contract or with any of such  
22 rules, regulations, or orders, this Contract may be canceled,  
23 terminated, or suspended, in whole or in part, and the City may be  
24 declared ineligible for further Government contracts in accordance  
25 with procedures authorized in said amended Executive Order, and  
26 such other sanctions may be imposed and remedies invoked as pro-

1 vided in said amended Executive Order, or by rule, regulation, or  
2 order of the Secretary of Labor, or as otherwise provided by law.

3 (g) The City will include the provisions of Sub-  
4 articles 16(a) through 16(g) in every subcontract or purchase order  
5 unless exempted by rules, regulations, or orders of the Secretary  
6 of Labor issued pursuant to Section 204 of said amended Executive  
7 Order, so that such provisions will be binding upon each subcon-  
8 tractor or vendor. The City will take such action with respect to  
9 any subcontract or purchase order as may be directed by the  
10 Secretary of Labor as a means of enforcing such provisions,  
11 including sanctions for noncompliance; Provided, however, That in  
12 the event the City becomes involved in, or is threatened with,  
13 litigation with a subcontractor or vendor as a result of such  
14 direction, the City may request the United States to enter into  
15 such litigation to protect the interests of the United States.

16 ARTICLE 17  
17 Compliance with Civil Rights Laws and Regulations

18 17. (a) The City shall comply with Title VI of the  
19 Civil Rights Act of 1964 (42 U.S.C. 2000d), Section 504 of the  
20 Rehabilitation Act of 1975 (Public Law 93-112, as amended), the Age  
21 Discrimination Act of 1975 (42 U.S.C. 6101, et seq.) and any other  
22 applicable civil rights laws, as well as with their respective  
23 implementing regulations and guidelines imposed by the U.S. Depart-  
24 ment of the Interior and/or Bureau of Reclamation.

25 (b) These statutes require that no person in the  
26 United States shall, on the grounds of race, color, national

1 origin, handicap, or age, be excluded from participation in, be  
2 denied the benefits of, or be otherwise subjected to discrimination  
3 under any program or activity receiving financial assistance from  
4 the Bureau of Reclamation. By executing this Contract, the City  
5 agrees to immediately take any measures necessary to implement this  
6 obligation, including permitting officials of the United States to  
7 inspect premises, programs, and documents.

8 (c) The City makes this agreement in consideration  
9 of and for the purpose of obtaining any and all Federal grants,  
10 loans, contracts, property discounts or other Federal financial  
11 assistance extended after the date hereof to the City by the Bureau  
12 of Reclamation, including installment payments after such date on  
13 account of arrangements for Federal financial assistance which were  
14 approved before such date. The City recognizes and agrees that  
15 such Federal assistance will be extended in reliance on the repre-  
16 sentations and agreements made in this article, and that the United  
17 States reserves the right to seek judicial enforcement thereof.

#### 18 ARTICLE 18

##### 19 Notices

20 18. Any notice, demand, or request authorized or re-  
21 quired by this Contract shall be deemed to have been given, on  
22 behalf of the City and CAWCD, when mailed, postage prepaid, or  
23 delivered to the Regional Director, Lower Colorado Region, Bureau  
24 of Reclamation, P.O. Box 427, Boulder City, Nevada 89005, and on  
25 behalf of the United States and CAWCD, when mailed, postage pre-  
26 paid, or delivered to the Manager of the City, 119 North Gilbert

1 Road, Gilbert, Arizona 85234, on behalf of the City and the United  
2 States, when mailed, postage prepaid, or delivered to the General  
3 Manager, Central Arizona Water Conservation District, 23636 North  
4 Seventh Street, Phoenix, Arizona 85024. The designation of the  
5 addressee or the address may be changed by notice given in the same  
6 manner as provided in this article for other notices.

7 ARTICLE 19  
8 Assignment Limited--Successors and Assigns Obligated

9 19. The provisions of this Contract shall apply to and  
10 bind the successors and assigns of the parties hereto, but no  
11 assignment or transfer of this Contract or any right or interest  
12 therein shall be valid unless and until approved in writing by the  
13 Contracting Officer and CAWCD.

14 ARTICLE 20  
Officials Not to Benefit

15 20. No Member of or Delegate to Congress, Resident  
16 Commissioner, or official of the City shall benefit from this  
17 Contract other than as a water user or landowner in the same manner  
18 as other water users or landowners.

19 ARTICLE 21  
20 Transfer of OM&R Responsibility to CAWCD;  
Project Repayment

21 21. (a) At or prior to the date that the United States  
22 transfers OM&R responsibility for project works associated with  
23 delivery of water to the Cities to CAWCD as the Operating Agency,  
24 the United States shall secure the agreement of CAWCD to perform  
25 the United States' obligations under this Contract to deliver water  
26 under this Contract through the transferred works.



1 (b) For the purpose of determining the allocation  
2 and repayment of costs of the CAP as provided in Article 9.3 of the  
3 Repayment Contract and any amendment or revision thereof, the costs  
4 associated with the delivery of water to the City under this  
5 Contract shall be nonreimbursable, and such costs shall be excluded  
6 from CAWCD's repayment obligation.

7 ARTICLE 22  
8 Repayment Contract Controlling

9 22. Pursuant to the Repayment Contract, the United  
10 States has agreed to construct and, in the absence of an approved  
11 Operating Agency, to operate and maintain the works of the Central  
12 Arizona Project and to deliver Central Arizona Project water to the  
13 various subcontractors within CAWCD's service area; and CAWCD has  
14 obligated itself for the payment of various costs, expenses, and  
15 other amounts allocated to CAWCD pursuant to Article 9 of the  
16 Repayment Contract. The City expressly approves and agrees to all  
17 the terms presently set out in the Repayment Contract, or as such  
18 terms may be hereafter amended, and agrees to be bound by the  
19 actions to be taken and the determinations to be made under that  
20 Repayment Contract, except as otherwise provided herein.

21 IN WITNESS WHEREOF, the parties hereto have executed this  
22 Contract No. 9-07-30-W0241 the day and year first above-  
23 written.

24 THE UNITED STATES OF AMERICA

25 By   
26 . . .

CENTRAL ARIZONA WATER  
CONSERVATION DISTRICT

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

By \_\_\_\_\_  
President

TOWN OF GILBERT, ARIZONA

Attest: *[Signature]*  
Clerk

By \_\_\_\_\_  
Mayor

Approved  
as to Form: *[Signature]*  
City Attorney

Exhibit "A"

CAP Master Repayment Contract

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Exhibit "B"

Assignment among RWCD, CAWCD and The United States  
(See Exhibit "12.3." to Agreement)

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Exhibit "C"

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**SRPMIC Settlement**

**Exhibit A for Exhibits 3.h.1 to 3.h.7**

**CAP Master Repayment Contract**

DUPLICATE-ORIGINAL

Contract No. 14-06-w-245  
Amendment No. 1  
B.C. Draft 11/28/88

UNITED STATES  
DEPARTMENT OF THE INTERIOR  
BUREAU OF RECLAMATION

CONTRACT BETWEEN THE UNITED STATES  
AND THE CENTRAL ARIZONA WATER CONSERVATION DISTRICT  
FOR DELIVERY OF WATER AND REPAYMENT OF COSTS OF THE  
CENTRAL ARIZONA PROJECT

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UNITED STATES  
DEPARTMENT OF THE INTERIOR  
BUREAU OF RECLAMATION

CONTRACT BETWEEN THE UNITED STATES  
AND THE CENTRAL ARIZONA WATER CONSERVATION DISTRICT  
FOR DELIVERY OF WATER AND REPAYMENT OF COSTS OF THE  
CENTRAL ARIZONA PROJECT

1. PARTIES

The parties to this contract, executed as of this first day of December, 1988, are the United States of America, acting through the Department of the Interior, and the Central Arizona Water Conservation District, a multi-county water conservation district organized under the laws of Arizona, with its principal place of business in Phoenix, Arizona.

2. AUTHORITIES

This contract is made pursuant to the:

2.1 Act of June 17, 1902, 32 Stat. 388, and acts amendatory thereof and supplementary thereto.

2.2 Boulder Canyon Project Act, approved December 21, 1928, 45 Stat. 1057, a supplement to the Federal Reclamation Laws.

2.3 Reclamation Project Act of 1939, approved August 4, 1939, 53 Stat. 1187, as amended.

2.4 Colorado River Basin Project Act, approved September 30, 1968, 82 Stat. 885, as amended, a supplement to the Federal Reclamation Laws.

1 2.5 Arizona Revised Statutes, Section 48-3701 et seq.

2 3. RECITALS

3 3.1 The Colorado River Basin Project Act provides, among other  
4 things, that for the purposes of furnishing irrigation water  
5 and municipal and industrial water supplies to water-deficient areas  
6 in Arizona and western New Mexico through direct diversion or exchange  
7 of water, control of floods, conservation and development of fish and  
8 wildlife resources, enhancement of recreation opportunities, and  
9 for other purposes, the Secretary of the Interior shall construct,  
10 operate, and maintain the Central Arizona Project, consisting of the  
11 principal works hereinafter described in Article 6.3.

12 3.2 Pursuant to the provisions of Arizona Revised Statutes,  
13 Section 48-3701 et seq., the Central Arizona Water Conservation District  
14 has been organized with the power to enter into a contract or contracts with  
15 the Secretary of the Interior to accomplish the purposes of Arizona Revised  
16 Statutes, Section 48-3701 et seq.

17 3.3 On December 15, 1972, the United States and the Contractor  
18 entered into a contract entitled "Contract Between the United States and the  
19 Central Arizona Water Conservation District for Delivery of Water and  
20 Repayment of Costs of the Central Arizona Project" (Contract  
21 No. 14-06-W-245), whereby, among other things, the United States agreed to  
22 construct the Central Arizona Project and the Contractor agreed to repay the  
23 costs of the project properly allocable to the Contractor.

24 3.4 Subarticle 9.3(b) of said contract provides that the  
25 Contractor's repayment obligation shall not exceed \$1.2 billion.

26 3.5 Subarticle 9.3(b) of said contract also provides that if the

1 Contractor's repayment obligation will exceed \$1.2 billion, the  
2 Contracting Officer shall consult with the Contractor and continuation of  
3 construction will be contingent upon the execution of an amendatory contract  
4 to cover the increased repayment obligation.

5 3.6 Both parties acknowledge that the Contractor's repayment  
6 obligation will exceed \$1.2 billion, and have agreed to increase the  
7 Contractor's repayment ceiling to a level sufficient to facilitate  
8 completion of the project.

9 4. ARTICLES OF AGREEMENT

10 NOW, THEREFORE, in consideration of the mutual and dependent  
11 stipulations and covenants herein contained, it is agreed by and between the  
12 parties hereto as follows:

13 5. DEFINITIONS

14 When used herein, unless otherwise distinctly expressed, or  
15 manifestly incompatible with the intent hereof, the terms:

16 5.1 "Federal Reclamation Laws" or "Reclamation Laws" shall  
17 mean the Act of June 17, 1902, 32 Stat. 388, and all acts amendatory  
18 thereof or supplementary thereto.

19 5.2 "Basin Project Act" shall mean the Colorado River Basin  
20 Project Act, 82 Stat. 885, dated September 30, 1968, as amended, which is a  
21 supplement to the Federal Reclamation Laws.

22 5.3 "Secretary" shall mean the Secretary of the Interior of the  
23 United States or his duly authorized representative.

24 5.4 "Contracting Officer" shall mean the Secretary or his  
25 authorized designee acting in his behalf.

26 5.5 "Contractor" shall mean the Central Arizona Water

1 Conservation District, organized pursuant to Arizona Revised Statutes,  
2 Section 48-3701 et seq.

3 5.6 "Service area" shall mean the area now included within  
4 the Central Arizona Water Conservation District, consisting of Maricopa,  
5 Pinal, and Pima Counties of Arizona and such other counties as may  
6 hereafter become part of the District, exclusive of any Indian reservation  
7 land lying wholly or partly within said Counties.

8 5.7 "Subcontractor" shall mean any irrigation district,  
9 municipality, individual, or any entity which enters into a water service  
10 subcontract with the United States and the Contractor in furtherance of the  
11 provisions of the Basin Project Act.

12 5.8 "Central Arizona Project" or "project" shall mean the  
13 project and works authorized by Section 301(a) of the Basin Project  
14 Act and constructed by the United States pursuant to the provisions  
15 of said Act and this contract.

16 5.9 "Project works" shall mean the principal works described  
17 in Section 301(a) of the Basin Project Act, and appurtenances thereto,  
18 or as modified pursuant to Article 6.4 hereof, together with lands,  
19 interests in lands, and rights-of-way for such works and appurtenances.

20 5.10 "Water supply system" shall mean the Navajo Project, Havasu  
21 Pumping Plant, the Granite Reef, Salt Gila and Tucson aqueducts and  
22 associated pumping plants and appurtenant works, but not including Tucson  
23 Terminal Storage or any distribution works.

24 5.11 "Distribution works" shall mean those facilities  
25 constructed or financed by the United States under the authorization in  
26 Section 309(b) of the Basin Project Act for the primary purpose of

1 distributing the project water supply within the service area after said  
2 project water supply has been transported or delivered through the water  
3 supply system.

4 5.12 "Agricultural water" or "irrigation water" shall mean  
5 project water used primarily in the commercial production of agricultural  
6 crops or livestock, including domestic use incidental thereto, on tracts of  
7 land operated in units of more than 5 acres.

8 5.13 "Miscellaneous water" shall mean water delivered from the  
9 project, or by exchange for project water, for recreational and fish and  
10 wildlife purposes at other than project facilities and shall have a lesser  
11 priority of use than agricultural water.

12 5.14 "Municipal and industrial water," herein referred  
13 to as "M&I water," shall mean project water other than agricultural or  
14 miscellaneous water delivered by means of the project works.

15 5.15 "Lands not having a recent irrigation history" shall  
16 mean, except where otherwise determined by the Secretary for efficiency of  
17 subcontractor's operation, lands which the Secretary determines were not  
18 irrigated during the period September 30, 1958, to September 30, 1968.

19 5.16 "OM&R" shall mean the care, operation, maintenance, and  
20 replacement of project works.

21 5.17 "Exchange water" shall mean Colorado River water made  
22 available in exchange for or in replacement of existing supplies from  
23 surface sources other than the mainstream of the Colorado River.

24 5.18 "Transferred works" shall mean such facilities of the water  
25 supply system or of other construction stages as to which OM&R  
26

1 responsibility is transferred from the United States to the Operating  
2 Agency.

3 5.19 "Operating Agency" shall mean the entity or entities  
4 authorized to assume OM&R responsibility of transferred works and approved  
5 for that purpose by the Contracting Officer.

6 5.20 "Transfer notice" shall mean a written notice or notices,  
7 numbered consecutively, which the Contracting Officer transmits to the  
8 Operating Agency and which shall designate:

9 (a) the transferred works;

10 (b) items of equipment and supplies transferred to the  
11 Operating Agency; and

12 (c) the date upon which such transfer will be effected.

13 5.21 "Gila River system waters" shall mean waters of the  
14 Gila River and tributaries thereof east of the Yuma-Maricopa County line.

15 5.22 "Notice of completion" shall mean the notice which the  
16 Contracting Officer issues to Contractor to announce the substantial  
17 completion of a construction stage. Each such notice of completion shall  
18 include the estimated amount of the repayment obligation for the  
19 construction stage to which the notice pertains, the date of initiation of  
20 repayment for the construction stage and indicate the amount and due date  
21 for the first payment for the construction stage.

22 5.23 "Development Fund" shall mean the separate fund, known  
23 as the Lower Colorado River Basin Development Fund, established in  
24 the Treasury of the United States pursuant to Section 403(a) of the  
25 Basin Project Act.

26 5.24 "Year" shall mean the period January 1 through the next



1 succeeding December 31.

2 5.25 "Contractor's Construction Cost Repayment Obligation,"  
3 hereinafter referred to as "repayment obligation," shall mean the total  
4 amount of all construction costs including related construction claims and  
5 interest thereon, OM&R costs during construction, and interest on costs  
6 allocated to the M&I water and power functions during construction, of the  
7 Central Arizona Project, incurred therefor and as determined by the  
8 United States and further described in Article 6.2 hereof, excluding  
9 reimbursable costs allocated to fish and wildlife and recreation, and costs  
10 associated with the delivery of water to entities other than the Contractor  
11 or subcontractors, and which is determined by the Secretary, after  
12 consultation with the Contractor, to be allocable to and repayable by the  
13 Contractor in accordance with the provisions of the Basin Project Act and  
14 this contract.

15 5.26 "Return flow" shall mean all agricultural, M&I, and  
16 miscellaneous waste water, seepage, and ground water which originates or  
17 results from water contracted for from the Central Arizona Project, but  
18 shall not include any water delivered through the project works for ground  
19 water recharge purposes.

20 5.27 "Project water" shall mean (a) all water allocated by the  
21 Secretary for project purposes by Federal Register notice dated  
22 March 24, 1983, and any subsequent reallocation by the Secretary as  
23 contemplated in paragraph 6 of said Federal Register notice, which water is  
24 available pursuant to contracts with the Secretary from: (1) the  
25 Colorado River; (2) Central Arizona Project dams and reservoirs; and (3)  
26 return flows captured by the Secretary for project use; (b) any water

1 delivered to entities in Arizona, through the project works, as a  
2 replacement supply for Cliff Dam; (c) water delivered to water users in  
3 Arizona, through the project works, in exchange for water delivered to users  
4 in New Mexico from or by means of the project works; and (d) any additional  
5 water not included in (a) above, that is required to be delivered by the  
6 Secretary through the project, pursuant to the Ak-Chin Water Rights  
7 Settlement Act of 1978 (Public Law 95-328), as amended on October 19, 1984  
8 (Public Law 98-530); the Southern Arizona Water Rights Settlement Act of  
9 October 12, 1982 (Title III of Public Law 97-293); and, subject to the  
10 execution of a settlement agreement by the Contractor providing for the  
11 settlement of the water rights claims of the Salt River Pima-Maricopa Indian  
12 Community and to the Salt River Pima-Maricopa Indian Community Water Rights  
13 Settlement Act of 1988 (Public Law 100-512), up to 22,000 acre-feet annually  
14 of Colorado River water to be delivered through the project works in  
15 accordance with said settlement agreement and legislation.

16 5.28 "Indian lands" shall mean the lands within any Indian  
17 reservation for which an allocation of project water has or will be made by  
18 the Secretary for delivery through project works.

19 5.29 "Navajo Project" shall mean the interests of the United  
20 States in the Navajo Generating Station and the Transmission System, or any  
21 replacement thereof, as authorized by Section 303 of the Basin Project Act  
22 and as described in contracts entered into pursuant to that Act.

23 5.30 "Construction stage" shall mean any one of the following:  
24 (1) the water supply system; (2) New Waddell and Modified Roosevelt Dams;  
25 (3) replacement features or programs for Cliff Dam; (4) Tucson terminal  
26 storage; (5) Hooker Dam or suitable alternative; and (6) Buttes Dam.

1           5.31 "Plan 6" shall mean Plan 6 for the Regulatory Storage  
2 Division of the Central Arizona Project as approved by Record of Decision  
3 of the Secretary dated April 3, 1984 as amended and supplemented by Records  
4 of Decision of the Secretary dated May 20, 1986 (Supplement One) and  
5 June 17, 1988 (Supplement Two).

6           5.32 "Allocable cost" shall mean (a) with respect to the project,  
7 the total project cost less (1) the cost of non-Indian distribution works,  
8 (2) the cost of the safety of dams component of Plan 6, (3) the cost of  
9 Indian distribution systems, (4) the cost of the Colorado River Division and  
10 the New Mexico fish hatchery, (5) the cost of cultural resources studies,  
11 (6) the contributions provided by the States of Arizona and New Mexico prior  
12 to execution of the Plan 6 Funding Agreement, (7) the costs of Charleston  
13 Dam and San Pedro Aqueduct, (8) the cost of 500 cubic feet per second of  
14 incremental capacity in the Granite Reef Aqueduct and related costs in the  
15 Navajo Project, and (9) such other costs as determined appropriate by the  
16 Contracting Officer; and (b) with respect to each construction stage, the  
17 total cost of such stage less that portion of the following costs associated  
18 with such stage: (1) the cost of the safety of dams component of Plan 6,  
19 (2) the cost of cultural resources studies, (3) the contributions provided  
20 by the States of Arizona and New Mexico prior to execution of the Plan 6  
21 Funding Agreement, (4) the cost of 500 cubic feet per second of incremental  
22 capacity in the Granite Reef Aqueduct and related costs in the Navajo  
23 Project, and (5) such other costs as determined appropriate by the  
24 Contracting Officer.

25           5.33 "OM&R Transfer Contract" shall mean the August 5, 1987,  
26 contract entitled "Contract Between the United States of America and the

1 Central Arizona Water Conservation District for the Transfer of Operation  
2 and Maintenance of Facilities" (Contract No. 7-07-30-W0167), and any  
3 amendment or revision thereof.

4 5.34 "Overall repayment period" shall mean the period of time  
5 beginning with initiation of repayment of the first construction stage and  
6 ending with final payment of the last construction stage.

7 5.35 "Plan 6 Funding Agreement" shall mean the April 15, 1986,  
8 agreement entitled "Agreement Among the United States, the Central Arizona  
9 Water Conservation District, the Flood Control District of Maricopa County,  
10 the Salt River Agricultural Improvement and Power District and Salt River  
11 Valley Water Users' Association, the Arizona Cities of Chandler, Glendale,  
12 Mesa, Phoenix, Scottsdale, and Tempe, the State of Arizona, and the City of  
13 Tucson for Funding of Plan Six Facilities of the Central Arizona Project,  
14 Arizona, and for other Purposes," as it may be supplemented or amended.

15 5.36 "Permanent service" shall mean that water supply service  
16 commencing in the year following substantial completion of the water supply  
17 system and continuing in perpetuity.

18 5.37 "Ground water recharge" shall mean the recharge of water  
19 pursuant to title 45, chapter 2, article 13, Arizona Revised Statutes, or  
20 the underground storage and recovery of water pursuant to title 45,  
21 chapter 3, Arizona Revised Statutes, or as said statutes may hereafter be  
22 amended or revised.

23 5.38 "Project power" shall mean the United States' entitlement  
24 to capacity and energy from the Navajo Project.

25 6. PROJECT CONSTRUCTION

26 6.1 Agreement of the United States. Subject to the terms and

conditions of this contract and within the limits of the funds made available therefor by Congress, the United States will expend toward the construction of the project, exclusive of interest costs during construction, \$832,180,000 based on 1967 cost estimates, plus or minus such amounts, if any, as may be justified by reason of ordinary fluctuations in construction costs as indicated by engineering cost indices applicable to the types of construction involved therein, or so much of such amount, as in the opinion of the Secretary, is necessary to construct said project, whichever amount is the lesser. The aforementioned amount includes the United States' costs of participation in the Navajo Project.

#### 6.2 Costs of Project.

(a) The estimated construction cost of \$832,180,000 for the project, based upon 1967 prices, has been determined as follows:

<u>Main System</u>	<u>\$ 1,000's</u>
Granite Reef Division	407,740
Orme Division	42,340
Salt-Gila Division	47,170
Tucson Aqueduct (Colorado River source)	46,300
Buttes Dam	35,240
Navajo Project	<u>106,000</u>
Subtotal	684,790
<u>Other Separate Features</u>	
Hooker Dam or suitable alternative	31,730
Charleston Dam and San Pedro Aqueduct (San Pedro River source)	<u>36,420</u>
Subtotal	68,150
<u>Miscellaneous Features</u>	
*Gila River Division	5,250
Indian Distribution System	19,970
Colorado River Division	42,450
Drainage System	<u>11,570</u>
Subtotal	79,240
Total Project	\$832,180

\*Note: Fish hatchery costs, some of which may be located on the Colorado River.

Provided, however, That (i) the adjustment provisions of Article 6.1 apply

1 to the total construction costs of the project and not to the costs of the  
2 individual line items set out in this Subarticle 6.2(a), and (ii) in  
3 accordance with provisions of Article 6.4 herein, the references to the  
4 individual line items set out in this Subarticle 6.2(a) are not to be deemed  
5 a determination that each of the features referred to in the individual line  
6 items will be constructed or that costs will be incurred for each of said  
7 individual line items based upon a percentage which the estimated costs for  
8 each individual line item bears to the project's total estimated  
9 construction costs.

10 (b) The Central Arizona Project costs incurred by the  
11 United States which are to be repaid by Contractor shall include the share  
12 allocated to the Contractor of (i) construction costs of the project, (ii)  
13 all expenses of whatsoever kind or nature heretofore or hereafter incurred  
14 by the United States in connection with, growing out of, or resulting from  
15 the construction, and (iii) the OM&R during construction of project works.  
16 The aforementioned share of allocated costs shall also include, but shall  
17 not be limited to, interest during construction on costs allocated to the  
18 M&I water and power functions, the cost of labor, materials, equipment,  
19 engineering, legal services, surveys, investigations, property,  
20 superintendence, administration, overhead, general expenses, special  
21 services, damages of all kinds and character, inspection, repair, and  
22 protection of project works and water supply, and the costs of all lands,  
23 interests in lands, and rights-of-way acquired by the United States for the  
24 project, all as determined by the Secretary.

25 6.3 Principal Works of the Project. The works and facilities to  
26 be constructed under this contract shall consist of the following principal

works:

(a) A system of main conduits and canals, including the Havasu Pumping Plant and a main canal and pumping plants (Granite Reef Aqueduct and pumping plants), for diverting and carrying water from Lake Havasu to the confluence of the Salt and Verde Rivers, which system will have a capacity of 3,000 cubic feet per second;

(b) Salt-Gila Aqueduct and pumping plant;

(c) Tucson Aqueduct and pumping plants;

(d) New Waddell and Modified Roosevelt Dams;

(e) replacement features or programs for Cliff Dam;

(f) Tucson Terminal Storage (if approved by the Secretary);

(g) Buttes Dam and Reservoir;

(h) Hooker Dam and Reservoir or suitable alternative which shall be constructed in such manner as to give effect to the provisions of Section 304(f) of the Basin Project Act;

(i) Charleston Dam and Reservoir and the San Pedro Aqueduct;

(j) related canals, regulating facilities, and electric transmission facilities required for the operation of said principal works;

(k) related water distribution and drainage works; and

(l) appurtenant works.

No works or facilities for the treatment of water are included in the project works to be constructed by the United States. Nothing contained herein shall be construed to indicate the order in which the aforescribed works will be constructed.

6.4 Changes in Project Works. Should the Secretary, either before or during construction, determine it to be in the best interests of

1 the project, he may, upon the completion of the studies currently being made  
2 or to be made, including land classifications, hydrological, engineering,  
3 geological, sedimentation, water supply, and repayment ability, and after  
4 consultation with the Contractor, change the location, size, or capacity of  
5 any of the project works, or may eliminate works, or add works to those  
6 described above, and the Secretary's decision on such changes,  
7 eliminations, and additions shall be conclusive.

8 6.5 Construction Conditions. The United States shall be under  
9 no obligation to commence or, having commenced, to continue construction of  
10 project works until transfer from the State of Arizona of such State-owned  
11 lands or interests therein, in a form acceptable to the Attorney General of  
12 the United States, as the Secretary determines is necessary in the  
13 construction, operation, or maintenance of the project.

14 6.6 Annual Work Program. During construction of the project  
15 works the Contracting Officer will consult with the Contractor and/or with  
16 any subcontractor through or within whose service area project works are to  
17 be constructed to achieve maximum coordination between such construction  
18 program and the annual programs of any affected subcontractor. Within  
19 30 days following the enactment by Congress and Presidential approval of  
20 annual or supplementary appropriation acts and the allotment of funds  
21 thereunder for continued construction of the project, the United States will  
22 furnish the Contractor with a notice and statement showing the proposed  
23 construction program for the balance of the current fiscal year and for the  
24 following fiscal year or years. If so requested in writing by the  
25 Contractor within 30 days of its receipt of such notice, the Secretary will  
26 consult with the Contractor and/or the affected subcontractor with respect



1 to the proposed program. The action of the Contracting Officer concerning  
2 the program after such consultation shall be final.

3       6.7 Inability of the United States to Complete Project on Basis  
4 of Cost Estimates. If construction of the project works shall have been  
5 commenced but, prior to completion, the Secretary determines that the cost  
6 of constructing the project will exceed the maximum amount to be expended  
7 therefor by the United States as provided for in Article 6.1 hereof, the  
8 Secretary may after consultation with the Contractor terminate construction  
9 and declare the obligations of the United States hereunder with regard to  
10 completion of construction of the project to have been fulfilled. If  
11 appropriations for the continuance and/or completion of construction in  
12 amounts sufficient in the opinion of the Secretary to complete said  
13 construction are authorized by Congress and are available, the Secretary  
14 shall consult with the Contractor and shall make continuation of  
15 construction contingent upon the execution of an amendatory contract with  
16 the Contractor wherein the Contractor's maximum repayment obligation is  
17 increased so as to cover the increased reimbursable costs as determined by  
18 the Secretary; Provided, however, That the Contractor shall not utilize any  
19 part of the completed or unfinished project facilities in the absence of  
20 written agreement with the Secretary for reimbursement therefor.

21       7. PROJECT OPERATION, MAINTENANCE, AND REPLACEMENT

22       7.1 Operation and Maintenance and Water Deliveries by the  
23 United States Prior to Completion of Construction. Except as provided in  
24 the OM&R Transfer Contract, prior to completion of project works by the  
25 United States, as determined and announced to the Contractor in writing by  
26 the Secretary, the United States will operate and maintain said project

1 facilities. The cost of said OM&R allocated to the Contractor shall be  
2 included in the Contractor's repayment obligation; Provided, however, That  
3 said OM&R cost shall not be included with the project cost ceiling set out  
4 in Article 6.1 hereof. During the aforesaid period, project water, if  
5 available, may be disposed of by the Secretary at charges which the  
6 Secretary determines to be appropriate; Provided, however, That to the  
7 extent deemed feasible by the Secretary, preference will be given to  
8 subcontractors and Indian lands. Payment for water shall be made in advance  
9 by the water user. The places of measurement and delivery of said water  
10 shall be established by the Secretary after consultation with the  
11 Contractor. Except as provided in the OM&R Transfer Contract, the proceeds  
12 accruing from the disposal of such water shall be credited to the  
13 Development Fund and applied toward the costs of the project as determined  
14 by the Secretary.

15 7.2 Operation and Maintenance and Water Deliveries after  
16 Completion of Construction. Except as provided in the OM&R Transfer  
17 Contract and any future agreements for the transfer of OM&R of the project  
18 works or portions thereof, upon completion of construction of a  
19 construction stage or upon completion of construction of the project, the  
20 United States shall operate and maintain such construction stage or the  
21 project and shall make project water available to project water users.

22 8. DELIVERY OF WATER

23 8.1 Obligation of United States. Subject to the terms,  
24 conditions, and provisions set forth herein, the United States will deliver  
25 project water to Contractor and, during such periods as it operates and  
26 maintains the water supply system, the United States will also transport and

1 deliver said water to the subcontractors. After transfer of OM&R the  
2 United States will make deliveries of Colorado River water to the Operating  
3 Agency; deliveries of other project waters will be made pursuant to  
4 determinations made by the Secretary.

5 8.2 Term of Contract. Subject to the terms, conditions, and  
6 provisions set forth herein, this contract is for permanent service.

7 8.3 Conditions Relating to Delivery.

8 (a) The obligation of the United States to deliver water  
9 under this contract is subject to:

10 (i) The availability of such water for use in Arizona  
11 under the provisions of the Colorado River Compact,  
12 executed November 24, 1922; the Boulder Canyon  
13 Project Act, 45 Stat. 1057, dated December 21,  
14 1928; the Colorado River Basin Project Act, dated  
15 September 30, 1968, 82 Stat. 885; the contract  
16 between the United States and the State of Arizona,  
17 dated February 9, 1944; the Opinion of the  
18 Supreme Court of the United States in the case of  
19 Arizona v. California et al., 373 U.S. 546,  
20 rendered June 3, 1963; and the March 9, 1964,  
21 Decree of that Court in said case, 376 U.S. 340, as  
22 amended on February 28, 1966, at 383 U.S. 268, and  
23 supplemented on January 9, 1979, at 439 U.S. 419,  
24 as now issued or hereafter modified.

25 (ii) Executive A, Seventy-eighth Congress, Second  
26 Session, a treaty between the United States of

1 America and the United Mexican States, signed at  
2 Washington on February 3, 1944, relating to the  
3 utilization of the water of the Colorado River and  
4 Tijuana River and of the Rio Grande from  
5 Fort Quitman, Texas, to the Gulf of Mexico, and  
6 Executive H, Seventy-eighth Congress,  
7 Second Session, a protocol signed at Washington on  
8 November 14, 1944, supplementary to the Treaty.

9 (iii) The express understanding and agreement by the  
10 Contractor that this contract is subject to  
11 the condition that Hoover Dam and Lake Mead shall  
12 be used: first, for river regulation, improvement  
13 of navigation, and flood control; second, for  
14 irrigation and domestic uses and satisfaction of  
15 present perfected rights in pursuance of  
16 Article VIII of the Colorado River Compact approved  
17 by Section 13(a) of the Boulder Canyon Project Act;  
18 and third, for power; and furthermore, that  
19 this contract is made upon the express condition  
20 and with the express covenant that all rights  
21 hereunder shall be subject to and controlled by the  
22 Colorado River Compact and that the United States  
23 and the Contractor shall observe and be subject to  
24 and controlled by said Colorado River Compact and  
25 Boulder Canyon Project Act in the construction,  
26 management, and operation of Hoover Dam,

1 Lake Mead, canals and other works, and the  
2 storage, diversion, delivery, and use of water  
3 to be delivered to Contractor hereunder.

4 (iv) The right of the United States temporarily to  
5 discontinue or reduce the amount of water to be  
6 delivered hereunder whenever such discontinuance or  
7 reduction is made necessary for purposes of  
8 investigations, inspections, replacements,  
9 maintenance, or repairs to any works whatsoever  
10 affecting, utilized or, in the opinion of the  
11 Secretary, necessary for delivery of water  
12 hereunder, it being understood that so far as  
13 feasible the United States will (1) do so during  
14 periods of low water demands and (2) give  
15 reasonable notice in advance of such temporary  
16 discontinuance or reduction.

17 (b) Delivery of Colorado River water by the United States  
18 under this contract shall be charged to the State of Arizona's apportionment  
19 under the aforementioned Supreme Court Decree of March 9, 1964, in  
20 Arizona v. California and will discharge to that extent the obligation of  
21 the United States to deliver water under the aforementioned contract between  
22 the United States and the State of Arizona, dated February 9, 1944.

23 8.4 Delivery Points. Colorado River water to be furnished  
24 to the Contractor pursuant to this contract will be delivered by the  
25 United States in the Colorado River at the point of diversion from  
26 Lake Havasu where the intake structures of the Havasu Pumping Plant are

1 constructed. Agua Fria and Upper Gila River system waters will be  
2 delivered to the Contractor at New Waddell and Buttes Dams, respectively.  
3 Delivery points for other project water supplies and for return flows will  
4 be determined by the Contracting Officer after consultation with the  
5 Contractor and/or the affected subcontractor therefor.

6 3.5 Measurement.

7 (a) The quantity of Colorado River water pumped from  
8 Lake Havasu for the project shall be measured by means of measuring devices  
9 to be installed as part of the project works. If, for any reason, in the  
10 opinion of the Secretary, said measuring devices shall fail to operate  
11 satisfactorily, the Secretary will, from the best information available,  
12 estimate the amount of water delivered to the Contractor.

13 (b) Deliveries of project water to the various  
14 subcontractors shall be measured by means of measuring devices to be  
15 installed as part of the project works at the points along the various  
16 aqueducts at which such water may be diverted for each of said  
17 subcontractors, and/or at the points in the various reservoirs formed by the  
18 dams constructed as part of the project works at which such water may be  
19 diverted for subcontractors and/or at the points where return flow may be  
20 delivered. These points of measurement will be established by the Secretary  
21 after consultation with Contractor and the affected subcontractor. If, for  
22 any reason, in the opinion of the Secretary, said measuring devices shall  
23 fail to operate satisfactorily, the Secretary will, from the best  
24 information available and after consultation with the Contractor and the  
25 affected subcontractor, estimate the amount of water delivered to each such  
26 subcontractor. The Secretary shall at all times have access over any lands

1 and rights-of-way of a subcontractor for the purpose of inspecting and  
2 checking said measuring devices.

3       8.6 Responsibility for Distribution of Water after Leaving  
4 Water Supply System. Whether or not the United States operates and  
5 maintains the project facilities, the United States shall not be responsible  
6 for the control, carriage, handling, use, disposal, or distribution of water  
7 after said water has been diverted from the water supply system. At such  
8 time as the Operating Agency assumes responsibility for the OM&R of project  
9 works, the responsibility for diversion, carriage, and transportation of  
10 the water through the water supply system shall be the sole responsibility  
11 of the Operating Agency. Responsibility for distribution of water beyond  
12 the water supply system shall be that of the subcontractors to whom said  
13 water is delivered from the water supply system. The United States, its  
14 officers, agents, and employees, shall not be liable for damage or claim of  
15 damage of any nature whatsoever for which there is legal responsibility  
16 arising out of or connected with the control, carriage, handling, use,  
17 disposal, or distribution of such water, and each subcontractor shall hold  
18 the United States, its officers, agents, and employees, harmless from any  
19 and all such claims.

20       8.7 Quantity of Water to be Delivered.

21       (a) The Secretary reserves the right to determine that  
22 quantity of Colorado River water to be released each year from Lake Mead for  
23 use by the Central Arizona Project pursuant to applicable law, which shall  
24 include the quantity of water which may be allocated by the Secretary for  
25 use on Indian lands.

26       (b) The quantity of Colorado River water available under

1 this contract for project purposes shall not exceed the quantity of water  
2 available to Arizona under the aforementioned Supreme Court Decree in  
3 Arizona v. California and in Arizona's water delivery contract with the  
4 United States after first providing for satisfaction of:

5 (i) present perfected rights and perfected rights  
6 described in Article II(D) of the Decree and the  
7 rights of other Federal reservations established  
8 prior to September 30, 1968; Provided, however,  
9 That the quantities of Colorado River water  
10 reserved to satisfy the aforesaid rights shall not,  
11 except as provided in said Decree, be reduced  
12 under any circumstances or for any reason what-  
13 soever including, without limitation, a temporary  
14 use permitted by the Secretary by other water users  
15 in Arizona, California, or Nevada, of water  
16 reserved pursuant to the foregoing but not  
17 needed during any calendar year; And provided  
18 further, That no rights to the recurrent use of  
19 such water shall accrue by reason of said temporary  
20 use; and

21 (ii) the quantities of water provided for in all  
22 water delivery contracts between the United States  
23 and water users in Arizona as of September 30,  
24 1968.

25 (c) The quantity of Colorado River water available under  
26 this contract for project purposes, including water for use on Indian lands



1 shall have the same priority as to delivery as the quantities of  
2 Colorado River water delivered pursuant to water delivery contracts,  
3 Federal reservations of water, and other arrangements between the  
4 United States and water users in Arizona entered into subsequent to  
5 September 30, 1968, for use of Colorado River water on Federal, State or  
6 privately owned lands in Arizona in total quantities not to exceed  
7 164,652 acre-feet of diversions per year; Provided, however, That the  
8 Contractor shall hold the United States, its officers, agents, employees,  
9 and successors or assigns, harmless as to any and all claims for damages to  
10 persons or to property direct or indirect and of whatever nature, arising  
11 out of or which may in any manner be connected with the operation and/or  
12 effect of this Subarticle.

13 (d) The limitation on contracting in Subarticle 3.7(c) above  
14 shall not apply to contracts with holders of present perfected rights to  
15 Colorado River water in Arizona or to the Secretary's order of  
16 November 24, 1982, reserving Colorado River water for the Cibola National  
17 Wildlife Refuge. Nothing in Subarticle 3.7(c) shall restrict the right of  
18 the Secretary under water service contracts referred to in said Subarticle  
19 to terminate and/or reduce any entity's entitlement to Colorado River water  
20 and to make that entitlement available to other water users in Arizona.

21 (e) During any year when the subcontractors cannot use any  
22 portion of their entitlement to project water, and such water cannot be  
23 resold or exchanged in accordance with the terms and conditions of the water  
24 service subcontracts, the Contractor shall have the right in its discretion  
25 to resell any or all of such water or to use any or all of such water for  
26 ground water recharge purposes, including the subsequent recovery and resale

1 of such water, subject to Federal law, including but not limited to the  
2 Reclamation Reform Act of 1982, State of Arizona law, and such rules and  
3 regulations as the Secretary may deem appropriate. Subject to the terms and  
4 conditions of water service subcontracts, the water orders of all  
5 subcontractors shall be met before any project water is made available to  
6 the Contractor under this provision.

7 8.3 Subcontracts.

8 (a) The United States shall be a party to subcontracts.

9 (b) The Secretary and the Contractor shall require in each  
10 subcontract that:

11 (i) unless and until otherwise provided by Congress,  
12 water from the Central Arizona Project shall not  
13 be made available directly or indirectly for the  
14 irrigation of lands not having a recent irrigation  
15 history, as determined by the Secretary, except in  
16 the case of Indian lands, national wildlife  
17 refuges, and, with the approval of the Secretary,  
18 State-administered wildlife management areas;

19 (ii) there be in effect measures, adequate in the  
20 judgment of the Secretary and the Contractor,  
21 to control expansion of irrigation from aquifers  
22 affected by irrigation in the Contractor's service  
23 area and to reduce pumping of ground water in the  
24 agricultural subcontractors' service areas by the  
25 amount of project water received by said  
26 agricultural subcontractors;

- 1 (iii) the canals and distribution systems through which  
2 water is conveyed after its delivery to the sub-  
3 contractors shall be provided and maintained with  
4 linings adequate in the Secretary's judgment to  
5 prevent excessive conveyance losses;
- 6 (iv) neither the Secretary, the Contractor nor any  
7 subcontractor shall pump or permit others to pump  
8 ground water from within the exterior boundaries of  
9 the service area of a subcontractor receiving  
10 water from the Central Arizona Project for any use  
11 outside of said subcontractor's service area  
12 unless the Secretary, the Contractor, and such  
13 subcontractor shall agree, or shall have previously  
14 agreed, that a surplus of ground water exists and  
15 that drainage is or was required;
- 16 (v) except as otherwise agreed by the Contracting  
17 Officer, neither the Contractor nor any  
18 subcontractor shall sell or otherwise dispose of or  
19 permit the sale or other disposition of any project  
20 water, including return flows, for use outside the  
21 Contractor's service area;
- 22 (vi) irrigation water made available thereunder may  
23 be made available by the Secretary for M&I purposes  
24 if and to the extent that such water is no longer  
25 required by the subcontractor for irrigation  
26 purposes and shall be made available in all cases

1 where lands receiving project water have been  
2 converted to municipal and industrial use;  
3 Provided, however, That subcontracts effectuating  
4 such transfers are subject to the approval of the  
5 Secretary and the Contractor, which approval shall  
6 not be withheld unreasonably; And provided further,  
7 That it shall be deemed unreasonable for the  
8 Secretary or the Contractor to withhold such  
9 approval on the basis that the right to convert  
10 from irrigation to M&I use for a specific  
11 development could better be exercised in some other  
12 subcontractor's service area. The water so  
13 converted from irrigation to M&I purposes will be  
14 delivered with the same priority and at the same  
15 rate per acre-foot as other M&I water. Likewise,  
16 subcontracts for furnishing water for M&I  
17 purposes, including, but not limited to, ground  
18 water recharge to the extent ground water recharge  
19 is consistent with Arizona law, shall provide that,  
20 if water to be delivered thereunder is not  
21 presently required for such purposes, such water  
22 may be made available by the Secretary to other  
23 users; Provided, further, That the subcontractor  
24 shall be relieved of its payment obligation under  
25 its subcontract only to the extent of the amount  
paid by such other users;

1 (vii) the acreage limitation provisions of Reclamation  
2 Laws shall apply solely to agricultural water  
3 service;

4 (viii) except as specifically provided therein, it shall  
5 be the provisions of this contract which shall be  
6 controlling in the event of any inconsistency  
7 between this contract and any subcontract;

8 (ix) the subcontractor shall levy all necessary assess-  
9 ments, tolls, and other charges and shall use all  
10 of the authority and resources available to the  
11 subcontractor to collect the same in order that the  
12 subcontractor may meet its obligations thereunder  
13 to make in full all payments required under said  
14 subcontract on or before the date such payments  
15 become due and to meet other obligations under the  
16 subcontracts;

17 (x) the subcontractor establish, maintain, and provide  
18 the United States and the Contractor with land,  
19 water use, and crop census records.

20 8.9 Shortages. As provided in Section 301(b) of the Basin  
21 Project Act, Article II(8)(3) of the Decree of the Supreme Court of the  
22 United States in Arizona v. California, 376 U.S. 340, dated March 9, 1964,  
23 shall be so administered that in any year in which, as determined by the  
24 Secretary, there is insufficient mainstream Colorado River water available  
25 for release to satisfy the annual consumptive use of 7,500,000 acre-feet in  
26 Arizona, California, and Nevada, diversions from the mainstream of the

1 Colorado River for the Central Arizona Project and for other uses in Arizona  
2 under contracts or other agreements with the United States executed  
3 subsequent to September 30, 1968, shall be so limited as to assure  
4 the availability of water in quantities sufficient to provide for  
5 the aggregate annual consumptive use by holders of present perfected  
6 rights, by other users in the State of California served under contracts  
7 existing as of September 30, 1968, with the United States by diversion works  
8 heretofore constructed, and by other Federal reservations in California of  
9 4,400,000 acre-feet of Colorado River water, and by users of the same  
10 character in Arizona and Nevada. Water users in the State of Nevada shall  
11 not be required to bear shortages in any proportion greater than would have  
12 been imposed in the absence of said Section 301(b), nor shall said Section  
13 affect the relative priorities, among themselves, of water users in Arizona,  
14 California, and Nevada which are senior to diversions for the Central  
15 Arizona Project, or amend any provisions of said Decree. The aforesaid  
16 limitation stated in Section 301(b) shall not apply so long as the  
17 Secretary shall determine and proclaim that means are available and  
18 in operation which augment the water supply of the Colorado River system in  
19 such quantity as to make sufficient Colorado River mainstream  
20 water available for release to satisfy annual consumptive use of  
21 7,500,000 acre-feet in Arizona, California, and Nevada.

22 8.10 Rate of Diversions of Colorado River Water. Subject to  
23 (a) the first proviso in Section 301(a) of the Basin Project Act, (b) the  
24 provisions of Subarticle 10.6(b) hereof, and (c) the provisions of  
25 Subarticle 8.7(a) hereof, any capacity in the Granite Reef Aqueduct in  
26 excess of 2,500 cubic feet per second may be utilized in the operations of

1 the project so as to maximize project benefits: Provided, however, That the  
2 use of such capacity shall not result in the annual diversion of a quantity  
3 of water in excess of the project's legal entitlement under the Basin  
4 Project Act.

5 8.11 Priority in Case of Shortage.

6 (a) Subject to the provisions of Section 304(e) of the Basin  
7 Project Act and the Secretary's allocation decisions published in the  
8 Federal Register on December 10, 1980, and March 24, 1983, any project water  
9 as defined in Subarticle 5.27(a) hereof, furnished through project  
10 facilities shall, in the event of shortages thereof, be reduced pro rata  
11 until exhausted, first for miscellaneous uses and next for agricultural  
12 uses, before such project water furnished for M&I uses is reduced.  
13 Thereafter, such project water for M&I uses will be reduced pro rata among  
14 all M&I water users. Each subcontract or other water delivery arrangement  
15 entered into pursuant to this contract shall so provide. This article shall  
16 not apply to Indian uses; Provided, however, That the relative priorities  
17 between Indian and non-Indian uses shall be as determined by the Secretary.  
18 Notwithstanding the provisions of this Subarticle, project water made  
19 available as a result of construction and operation of modifications to  
20 Roosevelt Dam as part of Plan 6 shall be distributed as provided in the  
21 Plan 6 Funding Agreement, and shall not be subject to reduction in the event  
22 of shortages of other project water supplies.

23 (b) Any project water, as defined in Subarticles 5.27(b),  
24 (c) and (d) hereof, shall retain its priority relative to project water as  
25 defined in Subarticle 5.27(a) hereof.

26 8.12 No Guarantee of Availability of Water. The United States

1 assumes no responsibility with respect to the quantity of water available  
2 for delivery pursuant to this contract. In no event shall the  
3 United States, its officers, agents, or employees, be liable for any  
4 damages, direct or indirect, of whatsoever nature, arising out of or in any  
5 way connected with any suspension or reduction in the delivery of water  
6 pursuant to this contract or with any shortage in the quantity of water  
7 available for delivery hereunder or to any subcontractor for any cause  
8 whatsoever including, but not limited to, drought, delay in the construction  
9 of the Navajo Project, the failure of the Navajo Project to be completed, or  
10 the lack of power for pumping.

11 3.13 Secretarial Control of Return Flow.

12 (a) The Secretary reserves the right to capture all return  
13 flow flowing from the exterior boundaries of the Contractor as a source of  
14 supply and for distribution to and use of the Central Arizona Project to the  
15 fullest extent practicable. The Secretary also reserves the right to  
16 capture for project use return flows within the boundaries of Contractor if  
17 in his judgment such return flow is not being put to a beneficial use. Any  
18 subcontractor may sell its return flow; Provided, however, That except as  
19 otherwise agreed by the Contracting Officer, such return flow may not be  
20 sold for use outside the Contractor's exterior boundaries; And provided  
21 further, That if the price received for such return flow is higher than the  
22 price paid for such project water, the amount of the excess price shall be  
23 paid by such subcontractor to the Contractor for application against the  
24 Contractor's repayment obligation to the United States.

25 (b) Any return flow captured by the United States and  
26 determined by the Secretary to be suitable and available for use on lands



1 within the service area and/or by any subcontractor therein may be delivered  
2 by the United States to a subcontractor as a part of the water supply for  
3 which the subcontractor contracts hereunder and such water shall be  
4 accounted and paid for pursuant to the provisions hereof.

5 8.14 Water and Air Pollution Control. The Contractor, in  
6 carrying out this contract, shall comply with all applicable water and air  
7 pollution laws and regulations of the United States and the State of  
8 Arizona, and shall obtain all required permits or licenses from the  
9 appropriate Federal, State, or local authorities.

10 8.15 Quality of Water. The operation and maintenance of  
11 project facilities shall be performed in such manner as is practicable to  
12 maintain the quality of project water made available through such  
13 facilities at the highest level reasonably attainable as determined by the  
14 Contracting Officer or the Operating Agency. Neither the United States nor  
15 the Operating Agency warrants the quality of water and are under no  
16 obligation to construct or furnish water treatment facilities to maintain  
17 or better the quality of water.

18 8.16 Exchange Water. Where the Secretary determines that a  
19 subcontractor is physically able to receive Colorado River mainstream water  
20 in exchange for or in replacement of existing supplies of surface water from  
21 sources other than the Colorado River to provide water supplies for users  
22 upstream from New Waddell, Modified Roosevelt and Buttes Dams, the  
23 Secretary may require that said subcontractor agree to accept said  
24 mainstream water in exchange for or in replacement of said existing supplies  
25 pursuant to the provisions of Section 304(d) of the Basin Project Act.  
26

1                   3.17 Rights Reserved to the United States to Have Water Carried  
2 by Project Facilities. As a condition to the construction of project  
3 facilities and the delivery of water hereunder, the Contractor agrees that  
4 all project facilities will be available for the diversion, transportation,  
5 and carriage of water for Indian and non-Indian uses pursuant to  
6 arrangements or contracts therefor entered into on their behalf with the  
7 Secretary. In the event the responsibility for the OM&R of project  
8 facilities is transferred to and assumed by the Operating Agency, such  
9 transfer shall be subject to the condition that the Operating Agency shall  
10 divert, transport, and carry such water for such uses pursuant to the  
11 provisions of the aforesaid arrangements or contracts; Provided, however,  
12 That the aforesaid arrangements or contracts will include provisions for the  
13 payment of applicable construction costs and OM&R costs in accordance with  
14 Articles 9.3 and 9.6 of this contract.

15                   3.18 Wheeling Non-Project Water. After taking into  
16 consideration the water delivery requirements of contracts for project water  
17 service and subject to availability of project capacity, non-project water  
18 may be wheeled through project facilities pursuant to wheeling agreements  
19 between the Contractor and the entity desiring to use project facilities for  
20 wheeling purposes. All such agreements shall be subject to the approval of  
21 the Contracting Officer who shall consider, among other things, the impact  
22 that the wheeling of such non-project water will have on the quality of  
23 project water. The Contractor and the Contracting Officer shall jointly  
24 develop a standard form of wheeling agreement including the rate structure  
25 for wheeling non-project water. All wheeling charges shall be paid to the  
26 Contractor by the entity contracting for the wheeling of non-project water.

1 The Contractor shall be entitled to retain revenues from wheeling charges  
2 sufficient to cover all OM&R costs associated with wheeling such non-project  
3 water, plus an administrative charge to be jointly determined by the  
4 Contractor and the Contracting Officer. All revenues from wheeling charges  
5 in excess of the OM&R costs and administrative charges shall be remitted by  
6 the Contractor to the Contracting Officer and deposited into the  
7 Development Fund.

8 8.19 Use of Project Power to Wheel Non-Project Water. If the  
9 energy requirements necessary for the pumping of project water are met and  
10 subject to the requirements of the Navajo Power Marketing Plan published in  
11 the Federal Register on December 21, 1987, project power may be used to  
12 wheel non-project water through project facilities under such conditions of  
13 use, including amounts, times of use, losses, costs, and other conditions as  
14 are established by the Contractor and approved by the Contracting Officer.

15 9. PAYMENT OF PROJECT COSTS ALLOCATED TO CONTRACTOR

16 9.1 Allocation of Construction Costs.

17 (a) Upon completion of each construction stage, the  
18 Contracting Officer will allocate costs to the various project purposes  
19 using the separable costs-remaining benefits procedure.

20 (b) For repayment purposes the reimbursable cost allocated  
21 to irrigation and M&I water by the separable costs-remaining benefits  
22 procedure will be combined and will hereinafter be termed the "water supply  
23 allocation." Upon completion of each construction stage, and at the  
24 periodic intervals specified in Subarticle 9.3(d), suballocation of the  
25 water supply allocation will be made to the irrigation and M&I water  
26 functions proportional to the water estimated to be used for each purpose

1 during the repayment period of each construction stage. The cost thus  
2 suballocated to the irrigation function will hereinafter be termed the  
3 "interest-free allocation." The cost thus suballocated to the M&I water  
4 function shall be added to the cost allocated to the commercial power  
5 function, plus interest during construction for both, and the sum will  
6 hereinafter be termed the "interest-bearing allocation."

7 (c) During construction, simple interest at the rate of  
8 3.342 percent per annum shall be charged on costs allocated to the interest-  
9 bearing function as adjusted by the Secretary (i.e., net disbursements  
10 reduced by contract holdbacks, revenues applied to construction cost, and  
11 nonreimbursable expenses financed from construction funds). The total  
12 amount of all interest thus accumulated through the construction period  
13 prior to the date of completion of each construction stage shall be added to  
14 and become part of the actual construction cost of each construction stage.  
15 Interest during construction shall not accrue during any period in  
16 which construction is deferred or postponed by the United States as a result  
17 of a national emergency, as determined by the Secretary, if authority to  
18 forego such interest exists or is made available to the Secretary.

19 9.2 Repayment Concepts.

20 (a) Costs suballocated to non-Indian irrigation water will  
21 be paid by the subcontractors to the Contractor on the basis of their  
22 ability to pay as determined by the Secretary.

23 (b) Costs allocated to commercial power and costs  
24 suballocated to M&I water use shall be combined and repaid with interest at  
25 a rate of 3.342 percent per annum on the unpaid balance.

26 (c) Reimbursable costs allocated to recreation and fish

1 and wildlife are anticipated to be covered by a separate contract and repaid  
2 by the beneficiaries thereof.

3 (d) Repayment of costs allocated to irrigation of Indian  
4 lands shall be governed by the provisions of Section 402 of the  
5 Basin Project Act.

6 (e) Repayment of the project will occur by construction  
7 stages, with each stage having a separate 50-year repayment schedule. Upon  
8 completion of each cost allocation study referred to in  
9 Subarticle 9.1(a), subsequent to the initial study associated with the  
10 first construction stage, the Contractor's repayment obligation and the  
11 obligation allocated to each construction stage will be adjusted based on  
12 the latest cost allocation study, and the Contractor will be provided with a  
13 revised repayment schedule for the project and each construction stage. The  
14 Contracting Officer will adjust previous principal and interest payments  
15 made by the Contractor to reflect the new repayment schedule. For each  
16 year where an adjustment in payments is necessary, there will be an over or  
17 underpayment which will accrue with interest at the rate of 3.342 percent  
18 per annum (compounded annually) to the adjustment date. If the adjustment  
19 indicates that the Contractor overpaid principal and interest, the  
20 Contractor shall be entitled to a credit against its next payments to the  
21 United States. Conversely, if the Contractor owes additional principal and  
22 interest to the United States, such amount shall be paid to the United  
23 States by the Contractor within 12 months of receipt of a statement therefor  
24 from the Contracting Officer. The Contractor may use the repayment reserve  
25 fund under Subarticle 10.3(b) hereof for any payment to the United States  
26 required as a result of the above adjustment.

1                   9.3 Contractor's Construction Cost Repayment Obligation.

2                   (a) The Contractor's repayment obligation shall consist of  
3 the total cost allocated to the water supply and power functions plus CM&R  
4 during construction and interest during construction on costs allocated to  
5 the M&I water and power functions, but shall not include costs allocated to  
6 fish and wildlife and recreation, and costs associated with the delivery of  
7 water to entities other than the Contractor or subcontractors. Such  
8 entities shall include but not be limited to Indian tribes and councils in  
9 central Arizona receiving project water and the New Mexico recipients of  
10 water service from Hooker Dam or suitable alternative. The costs to be  
11 excluded shall be calculated as follows:

12                   (f) Costs excluded from the Contractor's repayment  
13 obligation for New Mexico water service shall be  
14 determined by multiplying the project costs  
15 allocated to the water supply function by the ratio  
16 developed by dividing the quantity of project water  
17 projected to be delivered throughout the overall  
18 repayment period to water users in Arizona  
19 in exchange for water delivered to users  
20 in New Mexico from or by means of project  
21 works, by the total quantity of Colorado River  
22 water projected to be delivered by the project  
23 throughout the overall repayment period.

24                   (ii) The amount of other project costs which shall  
25 be excluded from the Contractor's repayment  
26 obligation shall be determined by multiplying the

1 project costs allocated to the water supply  
2 function by a ratio developed by dividing the  
3 quantity of project water projected to be delivered  
4 throughout the overall repayment period to entities  
5 other than the Contractor, the subcontractors, and  
6 those users in New Mexico to whom water has been  
7 made available through the construction of  
8 Hooker Dam or suitable alternative by the  
9 total quantity of project water projected to be  
10 delivered throughout the overall repayment period;  
11 Provided, That project water projected to be  
12 delivered to such users will be computed based on  
13 an assumption of full development not later than  
14 the year 2005.

15 (b) The costs determined under Subarticles 9.3(a)(i) and  
16 (ii) above shall be subtracted from the water supply costs obtained from the  
17 separable costs-remaining benefits procedure to determine the Contractor's  
18 water supply costs. The Contracting Officer shall suballocate the  
19 Contractor's water supply costs to each of the construction stages based on  
20 the ratios obtained by dividing the allocable cost of the construction stage  
21 by the allocable cost of the project (see Operation 1, Exhibit "A"). The  
22 water supply costs assigned to each construction stage are then further  
23 suballocated between irrigation and M&I water use in proportion to projected  
24 total water deliveries to each function over the 50-year repayment period of  
25 each construction stage (Operation 2, Exhibit "A"). The summarization of  
26 the suballocations to each construction stage determines the total water

1 supply cost to be assigned to irrigation and M&I water use (Operation 3,  
2 Exhibit "A"). To determine the Contractor's repayment obligation, the  
3 Contractor's water supply suballocation to irrigation and M&I water uses,  
4 and the power allocation from the separable costs-remaining benefits  
5 procedure, shall each be adjusted for any revenues received by the  
6 United States prior to the notice(s) of completion and for any contributions  
7 received by the United States under the Plan 6 Funding Agreement for the  
8 features constructed in that stage, and for the 500 cubic feet per second of  
9 incremental capacity in the Granite Reef Aqueduct and pumping plants (see  
10 Article 9.7) to determine the net amount of each function assigned to the  
11 Contractor (Operation 4, Exhibit "A"). The Contractor's repayment  
12 obligation shall be the summation of the net amount for each function.

13 (c) Once the Contractor's estimated or final repayment  
14 obligation has been determined by the Contracting Officer, the obligation  
15 shall be allocated to each construction stage based on the ratio obtained by  
16 dividing the allocable cost of each construction stage by the allocable cost  
17 of the project. Each construction stage will have a separate 50-year  
18 repayment period. The repayment obligation for each stage will be divided  
19 into interest-bearing and interest-free components. The interest-free  
20 component shall be the amount allocable to irrigation purposes for the  
21 stage. The interest-bearing component will be the amount obtained by  
22 subtracting the irrigation allocation for the stage from the obligation for  
23 the stage. The principal payments for each stage shall be determined by  
24 applying the percentages in Subarticle 9.3(f) to the repayment obligation  
25 for each stage. The total payment for each stage for any year shall be  
25 equal to the principal payment plus interest at the rate of 3.342 percent



1 per annum on the unpaid interest-bearing component of the repayment  
2 obligation for each stage. For the water supply system, the portion of each  
3 principal payment which is made by the Contractor from irrigation revenues  
4 received by the Contractor each year will be used by the United States to  
5 reduce the interest-free obligation. The remaining portion of the principal  
6 payments made by the Contractor each year for the water supply system will  
7 be used by the United States to reduce the interest-bearing obligation, and  
8 once the interest-bearing obligation has been retired, the entire principal  
9 payment made by the Contractor will be applied by the United States toward  
10 the interest-free obligation. For the other construction stages, the entire  
11 principal payment made by the Contractor each year for such stages will be  
12 applied by the United States to reduce the interest-bearing obligation  
13 first, and once such obligation has been retired, to reduce the interest-  
14 free obligation.

15 (d) At 7-year intervals following the determination of the  
16 Contractor's repayment obligation for the water supply system, or at more  
17 frequent intervals if it becomes apparent to the Contracting Officer that a  
18 significant change in water use has or will occur, until such time as the  
19 interest-bearing obligation for each construction stage has been repaid, the  
20 Contracting Officer will re-estimate the proportions of total water  
21 deliveries to irrigation and M&I water use over the 50-year repayment period  
22 for each stage. At such intervals, the Contracting Officer will adjust the  
23 original interest-bearing and interest-free allocation for each stage based  
24 on the new estimates and recalculate all preceding interest payments.  
25 Differences between amounts owed and amounts paid by the Contractor shall be  
26 adjusted by the Contracting Officer, who shall apply a credit against the

1 Contractor's next payment due or notify the Contractor of the additional  
2 amount due, as the case may be. All such adjustments shall include interest  
3 at the rate of 3.342 percent per annum (compounded annually). Any  
4 additional payments required from the Contractor shall be made within  
5 12 months of the Contractor's receipt of a statement from the Contracting  
6 Officer therefor. The Contractor may use the repayment reserve fund under  
7 Subarticle 10.3(b) hereof for any payment to the United States required as a  
8 result of the above adjustment.

9 (e) The Contracting Officer will notify the Contractor of  
10 (i) its estimated repayment obligation when construction of the first  
11 construction stage is substantially complete and upon completion of each  
12 subsequent construction stage, and (ii) the actual repayment obligation when  
13 the final construction stage has been completed, as determined by the  
14 Contracting Officer. In the event that the project ultimately consists only  
15 of the water supply system, New Waddell Dam, and Modified Roosevelt Dam, the  
16 Contractor's actual repayment obligation shall be limited to \$2.0 billion.  
17 If prior to completion of construction of such features the Contracting  
18 Officer determines that the Contractor's repayment obligation for such  
19 features will exceed \$2.0 billion, the Contracting Officer shall consult  
20 with the Contractor and continuation of construction will be contingent upon  
21 the execution of an amendatory contract to cover the increased repayment  
22 obligation. If construction of any other construction stage will result in  
23 an increase in the Contractor's repayment obligation by an amount equal to  
24 or less than the respective amount identified in Exhibit "B," which is  
25 attached hereto and made part of this contract, the Contractor's repayment  
26 ceiling may, after consultation with the Contractor, be increased by the

Contracting Officer by an amount equal to or less than the respective amount identified in Exhibit "B" by written notice thereof from the Contracting Officer to the Contractor. If construction of such other construction stage will result in an increase in the Contractor's repayment obligation by an amount greater than the respective amount identified in Exhibit "B," the Contracting Officer shall consult with the Contractor and the Contractor and the Contracting Officer shall agree upon one of the following courses of action prior to initiation of construction of such construction stage: (1) that additional repayment ceiling be made available from other construction stages, in which event the Contractor's repayment ceiling will be increased to the agreed-to amount by written notice from the Contracting Officer to the Contractor; or (2) that this contract be renegotiated to increase the Contractor's repayment ceiling; Provided, That these courses of action shall also apply in the event that, prior to completion of construction of such stage, the Contracting Officer determines that the construction of such stage will result in an increase in the Contractor's repayment obligation by an amount greater than the respective amount identified in Exhibit "B."

(f) Annual percentages of the repayment obligation for each construction stage shall be those set out in the following schedule or any revision thereof mutually agreed upon:

<u>Repayment Year</u>	<u>Percent of Repayment Obligation (Annual)</u>
1-7	1.0
8-14	1.3
15-21	1.6
22-28	2.0
29-35	2.6
36-42	2.7
43-49	2.7
50	2.7

1 (g) In the event that the Secretary contracts for delivery  
2 of non-project water under the provisions of Article 10.1, capital charges  
3 associated with such delivery shall be calculated, charged, and utilized in  
4 the same manner as capital charges deposited in the Development Fund  
5 pursuant to Article 8.13.

6 9.4 Payment of Contractor's Construction Cost Repayment  
7 Obligation.

8 (a) The Contractor shall make annual payments to the  
9 United States, to be credited to the Development Fund, which shall be  
10 sufficient, when combined with accruals from the other sources described in  
11 Section 403(f) of the Basin Project Act, the Hoover Power Plant Act of 1984,  
12 and other miscellaneous revenues, including but not limited to net wheeling  
13 charges, to effect repayment of the repayment obligation for each  
14 construction stage within a period of not more than 50 years beginning with  
15 the year following substantial completion of each construction stage. The  
16 Contractor's first payment shall be due on or before January 15 of the year  
17 following the year in which the Secretary announces the substantial  
18 completion of each construction stage. Annual payments thereafter shall  
19 be due on or before January 15 of each following year.

20 (b) The Contractor agrees to make annual payments  
21 calculated by the Secretary as follows:

22 (i) Calculate the annual principal payments required by  
23 the schedule in Subarticle 9.3(f) or any revision  
24 thereof for each construction stage.

25 (ii) Add to (i) the annual interest, at 3.342 percent,  
26 on the unpaid balance of the interest-bearing

1 allocation for each construction stage.

2 (iii) Determine the total amount of all interest and  
3 principal payments due for all construction  
4 stages.

5 (iv) Subtract therefrom the revenues estimated to be  
6 available from the Development Fund anticipating  
7 a zero balance at the end of each year in the  
8 Development Fund.

9 (v) Make adjustments for differences between estimated  
10 and actual revenues for the preceding year.

11 (c) On or before each December 15, beginning with  
12 December 15 of the year in which the Secretary notifies the Contractor of  
13 the substantial completion of the first construction stage, the Secretary  
14 will notify the Contractor of the amount of the annual payment due on the  
15 following January 15, which has been determined by the Secretary on the  
16 basis of the aforesaid calculation.

17 (d) The Contractor may make additional payments on the  
18 repayment obligation at any time subject to such terms and conditions as may  
19 be agreed upon by the Contractor and the Contracting Officer; provided,  
20 however, That all interest due is paid at the same time, whereupon  
21 appropriate adjustments in the schedule of future payments will be made by  
22 the Secretary, who shall as promptly as possible give the Contractor  
23 written notice of the adjusted repayment schedule.

24 (e) It is understood and agreed that the Contractor shall  
25 be obligated for the payments set forth in Subarticle 9.4(a) hereof and  
26 that regardless of the delinquency or default in payment of any charges

1 due to the Contractor from any subcontractor, or a diminution in the water  
2 supply available to the Contractor, or regardless of any other reason, the  
3 Contractor shall complete repayment of each construction stage within a  
4 50-year period beginning in the year following the announcement by the  
5 Secretary of substantial completion of such construction stage.

6 9.5 Commercial Power Rates. The Secretary will, consistent  
7 with applicable law, periodically review and provide for appropriate  
8 adjustments in the rates established for the sales of power and energy,  
9 revenues from which contribute to the Development Fund.

10 9.6 Other Costs Borne by the Contractor.

11 (a) In addition to the payments provided for in Article 9.4  
12 hereof, and subject to the provisions of Subarticle 9.6(d) hereof, during  
13 such periods as the United States operates and maintains completed  
14 construction stages, the Contractor shall make advance payments for  
15 OM&R costs incurred by the United States. The United States will furnish  
16 the Contractor with an estimate in writing at least 6 months  
17 prior to substantial completion of construction of the water supply system,  
18 of the OM&R cost due from the Contractor to the end of the then current  
19 year, together with an estimate of such cost for the calendar year  
20 immediately following. Within a reasonable time of the receipt of said  
21 estimates, as determined by the Contracting Officer, the Contractor shall  
22 advance to the United States the payments for the estimated OM&R cost to the  
23 end of the then current year and without further notice or demand shall on  
24 December 15 of the then current year and on June 15 of the following year  
25 advance to the United States in equal semiannual installments the  
26 Contractor's share of the estimated cost, including supervision and

1 administrative expense for the OM&R of the water supply system. Advance  
2 payments shall be made in subsequent years by the Contractor to the  
3 United States on the basis of estimates to be furnished by the United States  
4 on or before November 15 preceding said subsequent year and the advances of  
5 said payments shall be due and payable in equal semiannual payments on the  
6 following December 15 and June 15. Said OM&R costs are the total annual  
7 OM&R costs of completed construction stages which are allocated to the  
8 irrigation and M&I water supply functions less (i) the costs described in  
9 Subarticle 9.6(c) hereof, and (ii) an amount determined by multiplying the  
10 total of said annual costs by the ratio obtained by dividing the estimated  
11 amount of project water projected to be delivered in the subsequent year to  
12 entities other than the Contractor, the subcontractors, and those entities  
13 in New Mexico to which project water will be made available from Hooker Dam  
14 or suitable alternative, by the total amount of project water estimated to  
15 be delivered for use in that year.

16 (b) Differences between actual OM&R costs and the estimated  
17 costs shall be determined by the Contracting Officer and shall be adjusted  
18 in next succeeding estimates; Provided, however, That if in the opinion of  
19 the Contracting Officer the amounts advanced by the Contractor for any year  
20 are likely to be insufficient to pay the above-mentioned OM&R costs during  
21 such year, additional and sufficient sums of money shall be paid forthwith  
22 by the Contractor to the United States upon notice thereof and demand  
23 therefor by the Contracting Officer; Provided, further, That the  
24 United States will give Contractor reasonable notice in advance of any such  
25 deficiency.

26 (c) The Contractor's obligation to pay said OM&R costs

1 of completed construction stages will be reduced to the extent that project  
2 water is made available for use in New Mexico following completion of  
3 Hooker Dam or suitable alternative. Said reduction will be in the  
4 proportion which the quantity of project water projected to be delivered to  
5 water users in Arizona, in exchange for Gila River system waters delivered  
6 to water users in New Mexico from or by means of project works, bears to the  
7 total quantity of Colorado River water projected to be delivered to the  
8 project that year.

9 (d) In the event that responsibility for OM&R of project  
10 facilities is transferred to and assumed by the Contractor, the Contractor  
11 shall be relieved of the obligation to make OM&R payments associated with  
12 such facilities under Subarticle 9.6(a) of this contract. In that event,  
13 the United States shall pay or provide for payment of OM&R costs associated  
14 with delivery of water to entities other than the Contractor and the  
15 subcontractors. Such costs shall be computed in accordance with  
16 Subarticle 9.6(a) of this contract. If the Contractor does not receive  
17 payment in advance for such costs, the Contractor shall have no obligation  
18 to deliver such water.

19 (e) During the Hoover Dam cost-repayment period, the  
20 Contractor shall pay to the United States the sum of \$0.25 for each acre-  
21 foot of water pumped from Lake Havasu for miscellaneous and M&I water  
22 purposes as determined by the Contracting Officer. The quantity of water  
23 pumped for such purposes will be determined by the Contracting Officer at  
24 the end of each calendar year and the Contractor notified of the amount due  
25 by March 1 of each subsequent year. Payment shall be due on May 1 following  
26 notification. Said payment shall be credited to the Colorado River Dam Fund



1 established by Section 2 of the Boulder Canyon Project Act.

2 9.7 Repayment of Costs of Excess Capacity in Granite Reef  
3 Aqueduct. The costs of providing any capacity in the Granite Reef Aqueduct  
4 and pumping plants in excess of 2,500 cubic feet per second shall be repaid  
5 by Contractor from funds available to Arizona pursuant to the provisions of  
6 Section 403(f) of the Basin Project Act, or by funds from sources other than  
7 the Development Fund.

8 9.8 Ad Valorem Taxes, Assessments, Tolls, and Other Charges.  
9 Within the legal limits available to it, the Contractor shall levy  
10 ad valorem taxes upon the taxable property within the service area of the  
11 Contractor at rates determined necessary by the Contractor to raise funds  
12 which, together with the revenues from the sale of water and such financial  
13 assistance from the Development Fund as the Secretary determines is  
14 available therefor, are sufficient to meet the obligations of the Contractor  
15 to make in full all payments to the United States on or before the date such  
16 payments become due and to meet its other obligations under this contract.

17 9.9 Continuation of Payments After Project Payout. Following  
18 payment to the United States of the Contractor's final payment for the last  
19 construction stage, the Contractor shall continue to make annual payments to  
20 the United States to be credited to the Development Fund in amounts equal to  
21 the average annual principal payment for the project during the overall  
22 repayment period. In the event that no augmentation project, as  
23 contemplated in the Basin Project Act, has been authorized or is under  
24 active consideration by the Congress at the time project construction costs  
25 have been repaid in full, payments under this formula will be not required;  
26 Provided, however, That payments will commence after repayment of the

1 project costs pursuant to the formula, or any adjustment thereof agreed to  
2 by the parties, at such time as an augmentation project is authorized by  
3 Congress and the costs thereof allocated to the Contractor are determined by  
4 the Secretary.

5 9.10 Defaults.

6 (a) The Contractor shall pay a penalty on payments,  
7 installments or charges which become delinquent, computed at the rate of  
8 1 percent per month on the amount of such delinquent payments, installments,  
9 or charges from and after the date when the same become due until paid.

10 (b) No water shall be furnished to the Contractor during  
11 any period in which the Contractor may be in arrears more than 12 months in  
12 the payments to the United States required by Article 9.4 hereof.

13 (c) All rights of action for breach of this contract are  
14 reserved to the United States as provided by Federal law.

15 10. GENERAL PROVISIONS

16 10.1 Other Contracts. The Secretary reserves the right to  
17 contract directly with other water using entities concerning water supply  
18 through project facilities. In the event this occurs, the provisions of  
19 Article 8.17 hereof shall be applicable.

20 10.2 Title to Project Works. Title to all water supply system  
21 works and all project facilities constructed pursuant to the Basin Project  
22 Act and this contract shall be and remain in the United States until  
23 otherwise provided by Congress.

24 10.3 Reserve Funds.

25 (a) (i) Commencing with notice of transfer of OM&R for the  
26 Granite Reef Aqueduct, including the Havasu Pumping Plant, the Contractor

1 shall accumulate and maintain an emergency OM&R reserve fund, which the  
2 Contractor shall keep available to meet costs incurred during periods of  
3 interruption of water service.

4 (ii) The Contractor shall accumulate the reserve fund  
5 with annual deposits, including interest and dividends accruing to fund  
6 balances or holdings, of not less than \$400,000 in any year in which the  
7 fund balance is less than \$4,000,000. The fund shall be invested in a  
8 Federally insured interest- or dividend-bearing account, or in securities  
9 guaranteed by the Federal Government; Provided, That money in the reserve  
10 fund shall be available within a reasonable time to meet expenses for such  
11 purposes as those identified in Subarticle 10.3(a)(iv) hereof. Such annual  
12 deposits and the accumulation of interest and dividends to the reserve fund  
13 shall continue until \$4,000,000 is accumulated. Interest and dividends  
14 accruing to fund balances shall be added to the fund in any year when the  
15 fund balance is greater than \$4,000,000; Provided, That in no event shall  
16 the fund be increased to an amount greater than the actual amount of fixed  
17 OM&R costs for the preceding year as mutually determined by the Contractor  
18 and the Contracting Officer. Any balance in the fund in excess of the  
19 amount of fixed OM&R costs for the previous year shall be considered to be  
20 the general funds of the Contractor and available for use as such.

21 (iii) Upon mutual agreement between the Contractor and  
22 the Contracting Officer, the amount to be accumulated and maintained in the  
23 reserve fund provided for in this Subarticle may be adjusted in  
24 consideration of the risk and uncertainty stemming from the size and  
25 complexity of the project, the size of the annual OM&R budget, additions  
26 to, deletions from, or changes in project works, or OM&R costs not

1 contemplated when this contract was executed.

2 (iv) The Contractor may make expenditures from such  
3 reserve fund only for meeting unforeseen and extraordinary operation and  
4 maintenance costs, unusual or extraordinary repair or replacement costs, and  
5 betterment costs (in situations where recurrence of severe operation and  
6 maintenance problems can be avoided or eliminated). Proposed expenditures  
7 from the fund shall be submitted to the Contracting Officer in writing for  
8 review and written approval prior to disbursement.

9 (v) During any period in which any of the project works  
10 are operated and maintained by the United States, the reserve fund shall be  
11 available for like use by the United States.

12 (vi) On or before February 1 of each year, the  
13 Contractor shall provide to the Contracting Officer an annual statement  
14 indicating the principal and accumulated interest in the emergency CM&R  
15 reserve fund as of December 31 of the preceding year.

16 (b) (i) No later than 1 year following the Contractor's  
17 last construction advance under the Plan 6 Funding Agreement, the Contractor  
18 shall accumulate and maintain a repayment reserve fund to help assure  
19 payments to the United States under this contract.

20 (ii) The Contractor shall accumulate such reserve fund  
21 with annual deposits, including interest and dividends accruing to fund  
22 balances or holdings, of not less than \$4,000,000 in any year in which the  
23 fund balance is less than \$40,000,000. The fund shall be invested in a  
24 Federally insured interest- or dividend-bearing account, or in securities  
25 guaranteed by the Federal Government; Provided, That money in the reserve  
26 fund shall be available within a reasonable time to meet expenses for the

1 purpose for which it was established. Such annual deposits and the  
2 accumulation of interest to the reserve fund shall continue until  
3 \$40,000,000 is accumulated. Any balance in the fund in excess of  
4 \$40,000,000 shall be considered to be the general funds of the Contractor  
5 and available for use as such.

6 (iii) Upon mutual agreement between the Contractor and  
7 the Contracting Officer, the amount to be accumulated and maintained in the  
8 reserve fund provided for in this Subarticle may be adjusted.

9 (iv) Proposed expenditures from the fund shall be  
10 submitted to the Contracting Officer in writing for review and written  
11 approval prior to disbursement.

12 (v) On or before February 1 of each year, the  
13 Contractor shall provide to the Contracting Officer an annual statement of  
14 the principal and accumulated interest in the repayment reserve fund as of  
15 December 31 of the preceding year.

#### 16 10.4 Recreational Use of Water Facilities.

17 (a) The enhancement of recreational opportunities in  
18 connection with the project works authorized pursuant to Title III of the  
19 Basin Project Act shall be in accordance with the provisions of the Federal  
20 Water Project Recreation Act, 79 Stat. 213, dated July 9, 1965, except as  
21 provided in Subarticle 10.4(b) hereof.

22 (b) Recreational development at Orme Dam and Reservoir  
23 shall be governed by the provisions of Section 302(d) of the Basin Project  
24 Act.

#### 25 10.5 Confirmation of Contract.

26 (a) The Contractor, after the execution of this contract,

1 shall promptly seek to secure a decree of a court of competent jurisdiction  
2 of the State of Arizona confirming the execution of this contract. The  
3 Contractor shall furnish the United States a certified copy of the final  
4 decree, the validation proceedings, and all pertinent supporting records of  
5 the court approving and confirming this contract, and decreeing and  
6 adjudging it to be lawful, valid, and binding on the Contractor. This  
7 contract shall not be binding on the United States or the Contractor until  
8 such final decree has been entered.

9 (b) This contract shall be indivisible for purposes of  
10 validation and shall not be binding on the United States or the Contractor  
11 unless validated pursuant to the provisions of Subarticle 10.5(a) hereof in  
12 each and all of its terms and conditions.

13 10.6 Rules, Regulations, and Determinations.

14 (a) The parties agree that the delivery of water or the use  
15 of Federal facilities pursuant to this contract is subject to Reclamation  
16 Law, as amended and supplemented, and the rules and regulations promulgated  
17 by the Secretary of the Interior under Reclamation Law.

18 (b) The Contracting Officer, after an opportunity has  
19 been offered to the Contractor for consultation, shall have the right to  
20 make rules, regulations, and determinations consistent with the provisions  
21 of this contract, the laws of the United States and the State of Arizona,  
22 including, without limitation, rules, regulations, and determinations  
23 relative to maximizing project benefits from pumping from Lake Havasu, the  
24 rate and schedule of pumping therefrom and the rate and schedule of pumping  
25 at the Granite Reef pumping plants, to add to or modify said rules,  
26 regulations, and determinations as may be deemed proper and necessary to

1 carry out this contract, and to supply necessary details of its  
2 administration which are not covered by express provisions of this contract.  
3 The Contractor and each subcontractor shall observe such rules, regulations,  
4 and determinations and each subcontract shall so provide.

5 (c) Where the terms of this contract provide for action  
6 to be based upon the opinion or determination of either party to this  
7 contract, whether or not stated to be conclusive, said terms shall not be  
8 construed as permitting such action to be predicated upon arbitrary,  
9 capricious, or unreasonable opinions or determinations. In the event that  
10 the Contractor questions any factual determination made by the  
11 Contracting Officer, the findings as to the facts shall be made by the  
12 Secretary only after consultation with the Contractor and shall be  
13 conclusive upon the parties.

14 10.7 Books, Records, and Reports. The Contractor shall establish  
15 and maintain accounts and other books and records pertaining to  
16 administration of the terms and conditions of this contract, including: the  
17 Contractor's financial transactions, water supply data, project operation,  
18 maintenance and replacement logs, project land and right-of-way use  
19 agreements, and other matters specifically relating to this contract that  
20 the Contracting Officer may require. Reports thereon shall be furnished to  
21 the Contracting Officer in such form and on such date or dates as the  
22 Contracting Officer may require. Subject to applicable Federal laws and  
23 regulations, each party to this contract shall have the right during office  
24 hours to examine and make copies of the other party's books and records  
25 relating to matters covered by this contract.

26 10.8 Notices. Any notice, demand, or request authorized or

1 required by this contract shall be deemed to have been given, on behalf of  
2 the Contractor, when mailed, postage prepaid, or delivered to the Regional  
3 Director, Lower Colorado Region, Bureau of Reclamation, P.O. Box 427,  
4 Boulder City, Nevada 89005, and on behalf of the United States, when mailed,  
5 postage prepaid, or delivered to the General Manager of the Contractor,  
6 23636 North 7th Street, Phoenix, Arizona 85024. The designation of the  
7 addressee or the address may be changed by notice given in the same manner  
8 as provided in this article for other notices.

9 10.9 Contingent on Appropriation or Allotment of Funds. There  
10 expenditure or advance of any money or the performance of any obligation by  
11 the United States under this contract shall be contingent upon  
12 appropriation or allotment of funds. Absence of appropriation or allotment  
13 of funds shall not relieve the Contractor from any obligations under this  
14 contract. No liability shall accrue to the United States in case funds are  
15 not appropriated or allotted.

16 10.10 Changes in Contractor's Organization. While this contract  
17 is in effect, no change shall be made in the Contractor's organization,  
18 by exclusion of lands, by dissolution, consolidation, merger or otherwise,  
19 except upon the Contracting Officer's written consent; Provided, however,  
20 That approval is hereby given to the inclusion of other counties as part of  
21 Contractor's service area, except, however, that the United States shall not  
22 be required, under this contract, to construct project facilities to serve  
23 lands within said additional counties.

24 10.11 Assignment Limited--Successors and Assigns Obligated.  
25 The provisions of this contract shall apply to and bind the successors and  
26 assigns of the parties hereto, but no assignment or transfer of this



1 contract or any part or interest therein shall be valid until approved in  
2 writing by the Contracting Officer.

3 10.12 Judicial Remedies Not Foreclosed. Nothing herein shall  
4 be construed (a) as depriving either party from pursuing and prosecuting any  
5 remedy in any appropriate court of the United States or the State of Arizona  
6 which would otherwise be available to such parties even though provisions  
7 herein may declare that determinations or decisions of the Secretary or  
8 other persons are conclusive or (b) as depriving either party of any defense  
9 thereto which would otherwise be available.

10 10.13 Equal Opportunity. During the performance of this  
11 contract, the Contractor agrees as follows:

12 (a) The Contractor will not discriminate against any  
13 employee or applicant for employment because of race, color, religion, sex,  
14 or national origin. The Contractor will take affirmative action to ensure  
15 that applicants are employed, and that employees are treated during  
16 employment, without regard to their race, color, religion, sex, or national  
17 origin. Such action shall include, but not be limited to, the following:  
18 Employment, upgrading, demotion, or transfer; recruitment or recruitment  
19 advertising; layoff or termination; rates of pay or other forms of  
20 compensation; and selection for training, including apprenticeship. The  
21 Contractor agrees to post in conspicuous places, available to employees and  
22 applicants for employment, notices to be provided by the Contracting Officer  
23 setting forth the provisions of this Equal Opportunity clause.

24 (b) The Contractor will, in all solicitations or  
25 advertisements for employees placed by or on behalf of the Contractor, state  
26 that all qualified applicants will receive consideration for employment

1 without regard to race, color, religion, sex, or national origin.

2 (c) The Contractor will send to each labor union or  
3 representative of workers with which it has a collective bargaining  
4 agreement or other contract or understanding, a notice, to be provided by  
5 the Contracting Officer, advising the labor union or workers' representative  
6 of the Contractor's commitments under this Equal Opportunity clause, and  
7 shall post copies of the notice in conspicuous places available to employees  
8 and applicants for employment.

9 (d) The Contractor will comply with all provisions of  
10 Executive Order No. 11246 of September 24, 1965, as amended, and of the  
11 rules, regulations, and relevant orders of the Secretary of Labor.

12 (e) The Contractor shall furnish all information and  
13 reports required by said amended Executive Order and by the rules,  
14 regulations, and orders of the Secretary of Labor, or pursuant thereto, and  
15 will permit access to its books, records, and accounts by the  
16 Contracting Officer and the Secretary of Labor for purposes of investigation  
17 to ascertain compliance with such rules, regulations, and orders.

18 (f) In the event of the Contractor's noncompliance with the  
19 Equal Opportunity clause of this contract or with any of the said rules,  
20 regulations, or orders, this contract may be canceled, terminated, or  
21 suspended, in whole or in part, and the Contractor may be declared  
22 ineligible for further Government contracts in accordance with procedures  
23 authorized in said amended Executive Order, and such other sanctions may be  
24 imposed and remedies invoked as provided in said amended Executive Order, or  
25 by rule, regulation, or order of the Secretary of Labor, or as otherwise  
26 provided by law.

1 (g) The Contractor will include the provisions of paragraphs  
2 (a) through (g) in every subcontract or purchase order unless exempted by  
3 rules, regulations, or orders of the Secretary of Labor issued pursuant to  
4 Section 204 of said amended Executive Order, so that such provisions will be  
5 binding upon each subcontractor or vendor. The Contractor will take such  
6 action with respect to any subcontract or purchase order as the  
7 Contracting Officer may direct as a means of enforcing such provisions,  
8 including sanctions for noncompliance; Provided, however, That in the event  
9 the Contractor becomes involved in, or is threatened with, litigation with a  
10 subcontractor or vendor as a result of such direction by the  
11 Contracting Officer, the Contractor may request the United States to enter  
12 into such litigation to protect the interests of the United States.

13 10.14 Compliance With Civil Rights Laws and Regulations.

14 (a) The Contractor shall comply with Title VI of the  
15 Civil Rights Act of 1964 (42 U.S.C. 2000d), Section 504 of the  
16 Rehabilitation Act of 1975 (Public Law 93-112, as amended), the  
17 Age Discrimination Act of 1975 (42 U.S.C. 6101, et seq.) and any other  
18 applicable civil rights laws, as well as with their respective implementing  
19 regulations and guidelines imposed by the U.S. Department of the Interior  
20 and/or Bureau of Reclamation.

21 (b) These statutes require that no person in the United  
22 States shall, on the grounds of race, color, national origin, handicap, or  
23 age, be excluded from participation in, be denied the benefits of, or be  
24 otherwise subjected to discrimination under any program or activity  
25 receiving financial assistance from the Bureau of Reclamation. By executing  
26 this contract, the Contractor agrees to immediately take any measures

1 necessary to implement this obligation, including permitting officials of  
2 the United States to inspect premises, programs, and documents.

3 (c) The Contractor makes this agreement in consideration of  
4 and for the purpose of obtaining any and all Federal grants, loans,  
5 contracts, property discounts or other Federal financial assistance extended  
6 after the date hereof to the Contractor by the Bureau of Reclamation,  
7 including installment payments after such date on account of arrangements  
8 for Federal financial assistance which were approved before such date. The  
9 Contractor recognizes and agrees that such Federal assistance will be  
10 extended in reliance on the representations and agreements made in this  
11 article, and that the United States reserves the right to seek judicial  
12 enforcement thereof.

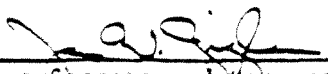
13 10.15 Officials Not to Benefit. No Member of or Delegate to  
14 Congress, Resident Commissioner or official of the Contractor shall benefit  
15 from this contract other than as a water user or landowner in the same  
16 manner as other water users or landowners.

17 11. STATUS OF DECEMBER 15, 1972 CONTRACT

18 Upon judicial confirmation of this contract, the December 15, 1972  
19 contract entitled "Contract Between the United States and the Central  
20 Arizona Water Conservation District For Delivery of Water and Repayment of  
21 Costs of the Central Arizona Project" (Contract No. 14-06-W-245), shall be  
22 superseded and replaced by this contract.  
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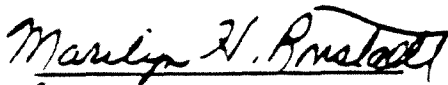
1 IN WITNESS WHEREOF, the parties hereto have caused this contract  
2 to be executed the day and year first above written.

3 THE UNITED STATES OF AMERICA

4  
5 By   
6 Assistant Secretary-Water and Science  
7 Department of the Interior

8 CENTRAL ARIZONA WATER CONSERVATION DISTRICT

9 ATTEST:

10   
11 Secretary

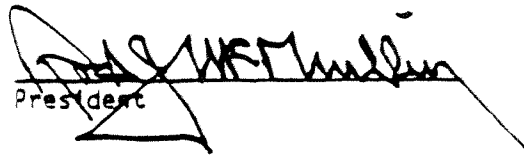
12 By   
13 President

EXHIBIT "A"  
DETERMINATION OF CAWCD WATER SUPPLY COST BY STAGE  
EXAMPLE ONLY

OPERATION 1 SUBALLOCATION OF CONTRACTOR'S WATER SUPPLY COSTS TO CONSTRUCTION STAGES:

Construction Stage	Allocable Cost (\$M)	Percentage	Water Supply Cost (\$M)
Water Supply System	1,500	71%	1,280
New Waddell	300	14%	256
Cliff Alternative	100	5%	85
Tucson Term. Storage	60	3%	51
Hooker Alternative	50	2%	43
Buttes	100	5%	85
Total	2,110	100%	1,800

EXHIBIT "A"  
DETERMINATION OF CAWCD WATER SUPPLY COST BY STAGE  
EXAMPLE ONLY

OPERATION 2 SUBALLOCATION OF WATER SUPPLY COST;

Construction Stage	Allocable Cost (\$M)		Water Distribution (%)	
	Construction	IDC	Irrigation	M&I
Water Supply System	1,280	200	58%	42%
New Waddell	256	40	54%	46%
Cliff Alternative	85	10	54%	46%
Tucson Term. Storage	51	10	53%	47%
Hooker Alternative	43	10	50%	50%
Buttes	85	10	50%	50%
Total	1,800	280	100%	

	Construction Cost Distribution (\$M)		IDC Cost Distribution (\$M)	
	Irrigation	M&I	Irrigation	M&I
Water Supply System	742	538	116	84
New Waddell	138	118	22	18
Cliff Alternative	46	39	5	5
Tucson Term. Storage	27	24	5	5
Hooker Alternative	21	21	5	5
Buttes	43	43	5	5
Total	1,017	783	158	122

EXHIBIT "A"  
 DETERMINATION OF CAWCD WATER SUPPLY COST BY STAGE  
 EXAMPLE ONLY

OPERATION 3 DETERMINATION OF TOTAL WATER SUPPLY COST:

	Total Cost Distribution (\$M)		
	Irrigation	M&I	Total
Water Supply System	742	622	1,364
New Waddell	138	136	274
Cliff Alternative	46	44	90
Tucson Term. Storage	27	29	56
Hooker Alternative	21	26	47
Buttes	43	48	91
Total	1,017	905	1,922

Irrigation = Irrigation construction cost

M&I = M&I construction cost + M&I IDC



EXHIBIT "A"  
DETERMINATION OF CAWCD WATER SUPPLY COST BY STAGE  
EXAMPLE ONLY

OPERATION 4 ADJUSTMENTS TO ALLOCATED COST:

	Irrigation Cost (\$M)	Interim Operations (\$M)	Local Funding (\$M)	500 CFS Granite Reef (\$M)	M&I (\$M)	Interim Operations (\$M)	Local Funding (\$M)	500 CFS Granite Reef (\$M)
Water Supply System	742	-4		33	622	10		32
New Waddell	138		-45		136		-135	
Cliff Alternative	46				44		-30	
Tucson Term. Storage	27				29			
Hooker Alternative	21				26			
Buttes	43				48			
Total	1,017	-4	-45	33	905	10	-165	32

	Power Cost (\$M)	Interim Operations (\$M)	Total (\$M)
Water Supply System	328	-100	1,663
New Waddell	61		155
Cliff Alternative	20		80
Tucson Term. Storage	12		68
Hooker Alternative	9		56
Buttes	19		110
Total	449	-100	2,132

EXHIBIT "B"  
CENTRAL ARIZONA WATER CONSERVATION DISTRICT (CAWCD) REPAYMENT CEILING (Billions of Dollars)

	Remaining	Potential	Stages			
Water Supply System, New Waddell, and modified Roosevelt Dams	Tucson Terminal Storage	Cliff Dam Alternative	Hooker Dam Alternative	Buttes Dam	Total	
Amount allocable to CAWCD repayment ceiling based on October 1988 prices.	\$1.681	\$ .058	\$ .060	\$ .035	\$ .100	\$ .254
Inflation (4%) on features remaining to be completed, plus an amount for unforeseen contingencies (.82 of the inflation component) <sup>1</sup>	.100	.032	.035	.047	.133	\$ .247
Additional costs which could be allocated to CAWCD if the Gila River Indian Community does not take CAP water	.259	----	----	----	----	----
Total	\$2.040	\$ .090	\$ .095	\$ .082	\$ .233	\$ .500
Rounded	\$2.000					\$ .500

<sup>1</sup> Inflation calculations based on the assumption that Tucson terminal storage and the Cliff Dam alternative are completed in 1995, and that the Hooker Dam alternative and Buttes Dam are completed in 2002.



**SRPMIC Settlement**

**Exhibit B for Exhibits 3.h.1 to 3.h.7**

**Assignment among RWD, CAECD, and the USA labeled  
Exhibit 12.3 to Agreement**

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EXHIBIT "12.3"

RWCD ASSIGNMENT TO CITIES

ASSIGNMENT

THIS AGREEMENT, dated as of February 12, 1988, is made and entered into by and among the United States of America acting through the Secretary of the Interior, the Central Arizona Water Conservation District, the Roosevelt Water Conservation District, the Arizona Cities of Chandler, Glendale, Scottsdale, Tempe, Mesa and Phoenix, and the Arizona Town of Gilbert.

R E C I T A L S

- A. The United States, the State of Arizona, the Salt River Pima-Maricopa Indian Community, the Salt River Valley Water Users' Association, the Salt River Project Agricultural Improvement and Power District, the Roosevelt Water Conservation District, the Roosevelt Irrigation District, the Arizona Cities of Chandler, Glendale, Mesa, Phoenix, Scottsdale and Tempe, and the Arizona Town of Gilbert, and the Central Arizona Water Conservation District have agreed to permanently settle the water rights of the Salt River Pima-Maricopa Indian Community and its members.
- B. The foregoing settlement agreement requires the assignment by the Roosevelt Water Conservation District to the Cities and Town participating in the settlement of a portion of the agricultural water supply available to Roosevelt Water Conservation District from the Central Arizona Project.
- C. The settlement agreement further requires the Secretary of the Interior, in certain events, to make available to the Cities and Town participating in the settlement a portion of the

1 agricultural water supply otherwise available from the Central  
2 Arizona Project.

3 NOW, THEREFORE, the parties hereto agree as follows:

4 1. Definitions. For purposes of this Agreement:

5 (a) "Cities" shall mean the City of Chandler, the City of  
6 Glendale, the City of Scottsdale, the City of Tempe, the City of  
7 Mesa, the City of Phoenix and the Town of Gilbert.

8 (b) "City" shall mean any one of the Cities.

9 (c) "Contractor" shall mean the Central Arizona Water  
10 Conservation District.

11 (d) "Repayment Contract" shall mean the Contract between the  
12 United States and the Central Arizona Water Conservation District  
13 for Delivery of Water and Repayment of Costs of the Central Arizona  
14 Project, dated December 15, 1972 (Contract No. 14-06-W-245), and  
15 any amendment or revision thereof.

16 (e) "Secretary" and "Contracting Officer" shall mean the  
17 Secretary of the Interior or his duly authorized representative.

18 (f) "Settlement Agreement" shall mean the Agreement dated as  
19 of February 12, 1988, among the United States of America; the Salt  
20 River Pima-Maricopa Indian Community; the Salt River Project  
21 Agricultural Improvement and Power District; the Salt River Valley  
22 Water Users' Association; the Roosevelt Water Conservation  
23 District; the Roosevelt Irrigation District; the Arizona Cities of  
24 Chandler, Glendale, Mesa, Phoenix, Scottsdale and Tempe, and the  
25 Arizona Town of Gilbert; and the Central Arizona Water Conservation  
26 District.

1 (g) "Subcontract" shall mean the Subcontract among the United  
2 States, the Central Arizona Water Conservation District, and the  
3 Roosevelt Water Conservation District, Providing for Water Service,  
4 Central Arizona Project, dated [to be supplied] (Contract No. [to  
5 be supplied]).

6 (h) "Subcontractor" shall mean the Roosevelt Water  
7 Conservation District.

8 All other terms used in this Agreement which are defined in the  
9 Repayment Contract or the Subcontract shall have the meanings  
10 ascribed to them in the Repayment Contract and the Subcontract.

11 2. Commencing with the later of the Year in which the  
12 Secretary issues Notice of Completion of the Water Supply System or  
13 the enforceability date of the Settlement Agreement, as defined in  
14 Paragraph 21.6 thereof, and for each Year thereafter until the term  
15 of the Subcontract expires, Subcontractor hereby assigns to the  
16 Cities an amount of Project Water, to be taken from Subcontractor's  
17 annual entitlement to Agricultural Water under Article 4.13 of the  
18 Subcontract, equal to the lesser of (a) 5,000 acre-feet, to be made  
19 available to the Cities at the Cities' Project turnouts, or  
20 (b) such amount of Project Water as is available from  
21 Subcontractor's annual entitlement to Agricultural Water after  
22 first providing for delivery to the Subcontractor, at the  
23 Subcontractor's Project turnout, of 8,000 acre-feet of Agricultural  
24 Water.

25 3. (a) If and when, as a result of a reduction in the  
26 acreage of eligible lands in Subcontractor's service area,



1 Subcontractor's entitlement to Agricultural Water under Article  
2 4.13 of its Subcontract is insufficient to provide for the delivery  
3 to the Cities at the Cities' Project turnouts of a total amount of  
4 3,000 acre-feet of Project Water (after first providing for the  
5 delivery of Subcontractor's entitlement to Agricultural Water as  
6 determined in accordance with subparagraph (b) of this Paragraph)  
7 in a Year in which the total supply of Agricultural Water available  
8 for delivery from the Project is 450,000 acre-feet or more, the  
9 Secretary shall thereafter make available for delivery to the  
10 Cities from the total supply of Agricultural Water otherwise  
11 available for delivery from the Project in each Year an amount of  
12 Project Water equal to the difference between (i) 3,000 acre-feet,  
13 to be made available to the Cities at the Cities' Project turnouts,  
14 and (ii) the amount of Project Water available to the Cities as a  
15 result of the assignment made in Paragraph 2 of this Agreement.

16 (b) If and when the provisions of subparagraph (a) of  
17 this Paragraph are implemented, Subcontractor's entitlement (i) to  
18 8,000 acre-feet of Agricultural Water under subparagraph (b) of  
19 Paragraph 2 of this Agreement or (ii) to such lesser amount of  
20 Agricultural Water as may be determined in conformance with the  
21 provisions contained in subparagraph (d) of Paragraph 12 of this  
22 Agreement shall be subject to reduction in an amount equal to  
23 Subcontractor's percentage entitlement to Agricultural Water under  
24 Subarticle 4.13(a) of the Subcontract multiplied by the amount of  
25 Agricultural Water made available by the Secretary for delivery to  
26 the Cities pursuant to subparagraph (a) of this Paragraph.

(c) Attached hereto as Appendix A are examples of how Paragraphs 2 and 3 of this Agreement are intended to operate under various conditions.

4. (a) Project Water made available to the Cities pursuant to Paragraph 2 of this Agreement shall be distributed among the Cities pro rata in proportion to the following maximum annual entitlements:

City of Chandler	=	972 acre-feet per Year;
City of Glendale	=	682 acre-feet per Year;
City of Scottsdale	=	23 acre-feet per Year;
City of Tempe	=	23 acre-feet per Year;
City of Mesa	=	627 acre-feet per Year;
City of Phoenix	=	1,136 acre-feet per Year;
Town of Gilbert	=	<u>1,537</u> acre-feet per Year;
TOTAL	=	5,000 acre-feet per Year.

(b) Project Water made available to the Cities pursuant to Paragraph 3 of this Agreement shall be distributed among the Cities pro rata in proportion to the following maximum annual entitlements:

City of Chandler	=	583 acre-feet per Year;
City of Glendale	=	409 acre-feet per Year;
City of Scottsdale	=	14 acre-feet per Year;
City of Tempe	=	14 acre-feet per Year;
City of Mesa	=	376 acre-feet per Year;
City of Phoenix	=	682 acre-feet per Year;
Town of Gilbert	=	<u>922</u> acre-feet per Year;
TOTAL	=	3,000 acre-feet per Year.

1 (c) Prior to the enforceability date of the Settlement  
2 Agreement, as defined in Paragraph 21.6 thereof, the relative  
3 amounts of Project Water to be made available to each of the Cities  
4 pursuant to subparagraphs (a) and (b) of this Paragraph may be  
5 adjusted by mutual agreement of such Cities. On and after the  
6 enforceability date of the Settlement Agreement, the relative  
7 amounts of Project Water to be made available to each of the Cities  
8 pursuant to subparagraphs (a) and (b) of this Paragraph may be  
9 adjusted only by mutual agreement of such Cities, the Contractor,  
10 and the United States.

11 (d) In the event this Agreement shall become effective  
12 and any City ("designating City") entitled to receive water here-  
13 under is unable to take delivery of such water by virtue of not  
14 having constructed a treatment plant capable of taking deliveries  
15 of water from the Central Arizona Project, the designating City  
16 shall in writing designate one or more Cities which are also  
17 parties to this Agreement to act as the interim recipients  
18 ("interim recipient") of the designating City's water, and water  
19 made available to the designating City under this Agreement shall  
20 be delivered by Contractor to the interim recipient(s) until such  
21 time as the designating City's treatment plant is completed and  
22 ready to take delivery of and treat deliveries of water from the  
23 Central Arizona Project. The designating City shall notify  
24 Contractor and Subcontractor of any such designation and shall also  
25 provide Contractor and Subcontractor with copies of any agreement  
26 between the designating City and the interim recipient(s). Any

1 such agreement shall not be inconsistent with any provisions of the  
2 Repayment Contract, the Subcontract, or this Agreement.

3 5. Notwithstanding anything in the Repayment Contract or the  
4 Subcontract to the contrary, Project Water made available to the  
5 Cities pursuant to this Agreement may be used for any M&I Water  
6 uses including but not limited to ground water recharge.

7 6. Notwithstanding any schedule or other instruction to the  
8 contrary, Project Water made available to the Cities pursuant to  
9 this Agreement, including any water delivered under a designation  
10 agreement entered into pursuant to Paragraph 4(d) hereof, shall be  
11 accounted for and treated by the Contractor and the Contracting  
12 Officer as having been scheduled for delivery by the Cities, and  
13 delivered to the Cities, prior to the delivery of any portion of  
14 the Cities' entitlements to Project M&I Water under the Cities' M&I  
15 Water service subcontracts (City of Chandler, Contract No. 5-07-30-  
16 W0070; City of Glendale, Contract No. 5-07-30-W0062; City of  
17 Scottsdale, Contract No. 5-07-30-W0063; City of Tempe, Contract  
18 No. 5-07-30-W0061; City of Mesa, Contract No. 5-07-30-W0060; City  
19 of Phoenix, Contract No. 5-07-30-W0059; Town of Gilbert, Contract  
20 No. [to be supplied]), prior to the delivery of any portion of the  
21 Cities' entitlements to under the Cities' Project Water Lease  
22 Agreements (Exhibits "3.m.1" through "3.m.7" of the Settlement  
23 Agreement), and prior to the delivery of any portion of the Cities'  
24 entitlements to "Colorado River water" under and as defined in the  
25 Cities' River Water Exchange Contracts (Exhibits "3.h.1" through  
26 "3.h.7" of the Settlement Agreement).

1           7. Except as otherwise provided in Paragraph 11 hereof, the  
2 Cities shall make payment for Project Water made available to the  
3 Cities pursuant to this Agreement in accordance with the terms and  
4 conditions of contracts to be entered into among the United States,  
5 the Contractor, and each of the Cities, the forms of which are  
6 attached as Exhibits "3.h.1" through "3.h.7" to the Settlement  
7 Agreement.

8           8. Except as provided in Paragraph 10 of this Agreement,  
9 nothing in this Agreement shall relieve the Subcontractor of its  
10 obligation to make the payments required in the Subcontract.

11           9. For the purpose of determining the allocation and  
12 repayment of costs of the CAP as provided in Article 9.3 of the  
13 Repayment Contract, the costs associated with the delivery of  
14 Project Water to the Cities pursuant to this Agreement shall be  
15 nonreimbursable, and such costs shall be excluded from the  
16 Contractor's repayment obligation.

17           10. Commencing with the later of the Year in which the  
18 Secretary issues Notice of Completion of the Water Supply System or  
19 the enforceability date of the Settlement Agreement, as defined in  
20 Paragraph 21.6 thereof, the Subcontractor's obligation to pay  
21 Agricultural Water service capital charges pursuant to Subarticle  
22 5.2(a) of the Subcontract shall be reduced in each Year by an  
23 amount equal to \$2.00 per acre-foot, or such amount as may be de-  
24 termined by the Contracting Officer based on payment capacity  
25 determinations provided for in the Repayment Contract, multiplied  
26 by the total amount of Project Water assigned by the Subcontractor

1 to the Cities pursuant to Paragraph 2 of this Agreement and  
2 scheduled for delivery by the Cities in such Year.

3 11. (a) Each City agrees to indemnify and hold harmless the  
4 Contractor and the Subcontractor from and against any operation,  
5 maintenance, and replacement costs associated with Project Water  
6 made available for delivery to the City pursuant to Paragraph 2 of  
7 this Agreement. Each City further agrees to indemnify and hold  
8 harmless the Contractor and the Subcontractor from and against any  
9 Agricultural Water service capital charges associated with any  
10 Project Water assigned by the Subcontractor to the City pursuant to  
11 Paragraph 2 of this Agreement. The liability of each City under  
12 this Paragraph 11(a) shall be its sole and separate obligation, and  
13 shall not be an obligation joint and several with any other City or  
14 Cities.

15 (b) In the event any City shall default and fail to  
16 indemnify Contractor or Subcontractor as required in Paragraph  
17 11(a) hereof, then such City's entitlement to water under this  
18 Agreement shall be forfeit and such entitlement shall be  
19 redistributed pro rata to each of the other Cities which are  
20 parties to this Agreement. The redistribution of water shall be  
21 effected by means of a notice from Subcontractor and Contractor, if  
22 either has not been indemnified, to the defaulting City and to the  
23 other Cities which are parties to this Agreement, and such  
24 redistribution shall be effective on the thirty-fifth day after the  
25 notice is given. Within ten days of receiving the notice of re-  
26 distribution, each City other than the defaulting City shall pay to

1 Subcontractor or Contractor, as the case may be, its share of the  
2 amount the defaulting City shall have failed to pay, which share  
3 shall be in the proportion which the amount of water redistributed  
4 to such City bears to the total amount of water redistributed. In  
5 the event any City to which water is redistributed shall fail to  
6 make the payment hereby required to be made within the time herein  
7 prescribed, Subcontractor or Contractor, as the case may be, shall  
8 be free to redistribute such City's entitlement to redistributed  
9 water to any other City which makes such payment and which is also  
10 a party to this Agreement.

11 12. (a) Subcontractor's entitlement to Agricultural Water  
12 under Subarticle 4.13(a) of the Subcontract shall be 5.98 percent  
13 of the total supply of Agricultural Water available for delivery  
14 from the Project (subject to reduction by reason of the factors  
15 identified in Subarticle 4.13(a) of the Subcontract as determined  
16 by the Contracting Officer) unless, prior to the issuance by the  
17 Secretary of Notice of Completion of the Water Supply System,  
18 Subcontractor notifies the Contractor and the Contracting Officer  
19 that it wishes to reduce its entitlement to a lesser percentage of  
20 the total Agricultural Water supply. Subject to the requirements  
21 and limitations of this Paragraph 12, Subcontractor's percentage  
22 entitlement under Subarticle 4.13(a) of the Subcontract shall be as  
23 stated in the notice from the Subcontractor to the Contractor and  
24 the Contracting Officer.

25 (b) Notwithstanding the foregoing, the Contractor and  
26 the Contracting Officer may at any time prior to the issuance of

1 such Notice of Completion require the Subcontractor to specify its  
2 entitlement to Agricultural Water under Subarticle 4.13(a) of the  
3 Subcontract by notifying the Subcontractor that it must specify  
4 such entitlement within six months of the date that the Contractor  
5 and the Contracting Officer issue such notice. Subject to the  
6 requirements and limitations of this Paragraph 12, Subcontractor's  
7 percentage entitlement to Agricultural Water under Subarticle  
8 4.13(a) of the Subcontract shall be as specified by the  
9 Subcontractor in response to the notice issued by the Contractor  
10 and the Contracting Officer. In the event the Subcontractor fails  
11 to make such specification within the time required,  
12 Subcontractor's entitlement shall be fixed at 5.98 percent of the  
13 total Agricultural Water supply (subject to adjustment by reason of  
14 the factors identified in Subarticle 4.13(a) of the Subcontract as  
15 determined by the Contracting Officer).

16 (c) At the time the Subcontractor notifies the  
17 Contractor and the Contracting Officer of its percentage  
18 entitlement pursuant to subparagraph (a) of this Paragraph, or at  
19 the time the Subcontractor specifies its entitlement pursuant to  
20 subparagraph (b) of this Paragraph, Subcontractor may relinquish:

21 (i) all or part of its rights to any additional Agricultural  
22 Water entitlement under Subarticle 4.13(a) of the  
23 Subcontract to be made available to the Subcontractor as  
24 a result of deductions made in other subcontractors'  
25 entitlements to Agricultural Water to reflect removal of  
26 eligible lands from agricultural use; and



1 (ii) all or part of its rights to any additional Agricultural  
2 Water entitlement under Subarticle 4.13(b) of the  
3 Subcontract to be made available to the Subcontractor as  
4 a result of the Secretary's reallocation of entitlements  
5 to Agricultural Water that were not contracted for by the  
6 entities to which such entitlements were first made  
7 available;

8 Provided, however, that the Subcontractor shall relinquish at least  
9 5,000 acre-feet, or the percentage of the projected Agricultural  
10 Water supply that most closely approximates 5,000 acre-feet, of any  
11 additional Agricultural Water entitlement to which the  
12 Subcontractor would be entitled under Subarticle 4.13(b) of the  
13 Subcontract as a result of the Secretary's reallocation of entitle-  
14 ments to Agricultural Water that were not contracted for by the  
15 entities to which such entitlements were first made available.

16 (d) Subject to the requirements and limitations of this  
17 Paragraph 12, Subcontractor may select its entitlement to  
18 Agricultural Water under Subarticle 4.13(a) of the Subcontract  
19 based upon its own evaluation of potential Agricultural Water  
20 supplies and its own requirements; Provided, however, that said  
21 Subcontractor's entitlement to Agricultural Water shall in no event  
22 exceed the lesser of 5.98 percent or the percentage entitlement  
23 determined by dividing the number of acres of eligible lands in the  
24 Subcontractor's service area by the total number of acres of  
25 eligible lands in the service areas of all subcontractors of  
26 Agricultural Water, as determined by the Contracting Officer.

13. Except as provided in this Agreement, all terms and conditions of the Subcontract shall remain unchanged and in full force and effect.

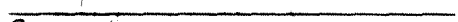
IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first above written.

THE UNITED STATES OF AMERICA

By 

Attest:

CENTRAL ARIZONA WATER CONSERVATION  
DISTRICT, an Arizona municipal  
corporation


  
Secretary

By

Name: George W. Barr  
Title: President

Attest:

ROOSEVELT WATER CONSERVATION  
DISTRICT, an Arizona municipal  
corporation

  
Secretary

By 

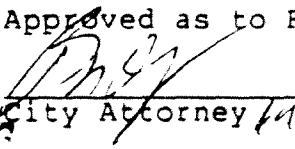
Name: Mark W. Dobson  
Title: President

Attest:

CITY OF PHOENIX, a Municipal  
corporation, MARVIN A. ANDREWS,  
City Manager

  
Clerk

Approved as to Form:

  
City Attorney

By 

1 Attest:

CITY OF SCOTTSDALE, an Arizona  
municipal corporation2 Mark C. Mays  
Clerk

3 Approved as to Form:

4 Francis R. Gable  
5 City AttorneyBy Herbert R. Drinkwater

Name:

Title: Mayor

7 Attest:

CITY OF GLENDALE, an Arizona  
municipal corporation8 Julienne Schum  
Clerk

9 Approved as to Form:

10 Kit V. Hoff  
11 City AttorneyBy George R. Renner

Name:

Title: Mayor

13 Attest:

CITY OF MESA, an Arizona municipal  
corporation14 Stella E. Pfeiffer  
Clerk

15 Approved as to Form:

16 Neal Beets  
17 City AttorneyBy C. K. Walker

Name:

Title: City Manager

20 Attest:

CITY OF TEMPE, an Arizona municipal  
corporation21 Helen R. Fowler  
Clerk

22 Approved as to Form:

23 Harold L. Miskel  
24 City AttorneyBy Harry E. Mitchell

Name:

Title: Mayor

26 . . .

Attest:

CITY OF CHANDLER, an Arizona  
municipal corporation

Clerk, Acting

Approved as to Form:

By

Name: Richard Dugan  
Title: NAACP

Title: Mayer

City Attorney

Attest:

TOWN OF GILBERT, an Arizona municipal corporation

Clerk

Approved as to Form:

By

Name: Steve M. Berman

Title:

City Attorney

• • •

**Total CAP Water Available to M&I:**

443,067 A

**SRPMIC Agreement Water Calculations**

• Total Agreement Water Purchased:

22,000

• Losses Attributable to Agreement Water:

2,088

Total Agreement Water Credit:

19,912 B

Sum of SRPMIC Agreement Entitlements:

26,000 C

Total Water Available to M&amp;I (A + B):

462,979

Total of M&amp;I Entitlements (C + 638,823):

664,823

Percent of Total M&I Entitlements Avail for Delivery  
(A + B)/(C + 638,823):

69.64%

CAP Water Available to M&amp;I: 443,067 Acre-feet

City	(X) Original CAP Allocation (AF)	Percent of Total M&I Allocation	Percent of SRPMIC Agreement	(Y) SRPMIC Agreement Entitlement (AF)	Delivery Without Agreement (AF)	Delivery With Agreement* (AF)
Avondale	4,099	0.64%	0.00%	0	2,833	2,855
Peoria	17,849	2.79%	0.00%	0	12,338	12,430
Glendale	14,083	2.20%	13.64%	3,545	9,735	12,276
Phoenix	113,882	17.83%	22.73%	5,909	78,721	83,422
Scottsdale	19,702	3.08%	0.45%	118	13,619	13,803
Chaparral City	6,978	1.09%	0.00%	0	4,824	4,859
Prescott	7,127	1.12%	0.00%	0	4,927	4,963
Payson	4,995	0.78%	0.00%	0	3,453	3,478
Tempe	4,315	0.68%	0.45%	118	2,983	3,087
Mesa	29,527	4.62%	12.55%	3,262	20,411	22,834
Apache Jct	6,000	0.94%	0.00%	0	4,147	4,178
Chandler	3,668	0.57%	19.45%	5,056	2,536	6,075
Gilbert	7,235	1.13%	30.74%	7,991	5,001	10,604
Casa Grande	8,884	1.39%	0.00%	0	6,141	6,187
Tucson	148,420	23.23%	0.00%	0	102,595	103,359
Total				26,000		

No Adverse Impact on Indians.

\* Distribution of all water available to M&amp;I in accordance with new M&amp;I shortage percentage as follows:

$$(X+Y) \cdot [(A+B)/(C+638,823)]$$

where

X = entity's original CAP allocation (AF)

Y = entity's SRPMIC agreement entitlement (AF)

A = total CAP water available to M&amp;I (AF)

B = agreement water purchased less losses (AF)

C = sum of SRPMIC agreement entitlements (AF)

638,823 = sum of original CAP M&amp;I allocations (AF)

**Total CAP Water Available to M&I:**

218,338 A

**SRPMIC Agreement Water Calculations**

• Total Agreement Water Purchased:	22,000	
• Losses Attributable to Agreement Water:	3,496	
Total Agreement Water Credit:	18,504	B
Sum of SRPMIC Agreement Entitlements:	26,000	C
Total Water Available to M&I (A + B):	236,842	
Total of M&I Entitlements (C + 638,823):	664,823	
Percent of Total M&I Entitlements Avail for Delivery (A + B)/(C + 638,823):	35.62%	

CAP Water Available to M&amp;I: 218,338 Acre-feet

City	(X) Original CAP Allocation (AF)	Percent of Total M&I Allocation	Percent of SRPMIC Agreement	(Y) SRPMIC Agreement Entitlement (AF)	Delivery Without Agreement (AF)	Delivery With Agreement* (AF)
Avondale	4,099	0.64%	0.00%	0	1,385	1,460
Peoria	17,849	2.79%	0.00%	0	6,031	6,359
Glendale	14,083	2.20%	13.64%	3,545	4,759	6,280
Phoenix	113,882	17.83%	22.73%	5,909	38,481	42,675
Scottsdale	19,702	3.08%	0.45%	118	6,657	7,061
Chaparral City	6,978	1.09%	0.00%	0	2,358	2,486
Prescott	7,127	1.12%	0.00%	0	2,408	2,539
Payson	4,995	0.78%	0.00%	0	1,688	1,779
Tempe	4,315	0.68%	0.45%	118	1,458	1,579
Mesa	29,527	4.62%	12.55%	3,262	9,977	11,681
Apache Jct	6,000	0.94%	0.00%	0	2,027	2,137
Chandler	3,668	0.57%	19.45%	5,056	1,239	3,108
Gilbert	7,235	1.13%	30.74%	7,991	2,445	5,424
Casa Grande	8,884	1.39%	0.00%	0	3,002	3,165
Tucson	148,420	23.23%	0.00%	0	50,151	52,874
Total				26,000		

No Adverse Impact on Indians.

\* Distribution of all water available to M&amp;I in accordance with new M&amp;I shortage percentage as follows:

$$(X+Y) \cdot [(A+B)/(C+638,823)]$$

where

X = entity's original CAP allocation (AF)

Y = entity's SRPMIC agreement entitlement (AF)

A = total CAP water available to M&amp;I (AF)

B = agreement water purchased less losses (AF)

C = sum of SRPMIC agreement entitlements (AF)

638,823 = sum of original CAP M&amp;I allocations (AF)

APPENDIX A

The following are five examples of how Paragraphs 2 and 3 of the Assignment are intended to operate under varying water supply conditions and assuming varying entitlements to CAP Agricultural Water for Roosevelt Water Conservation District ("RWCD") under Subarticle 4.13(a) of RWCD's CAP Agricultural Subcontract.

EXAMPLE 1

1. Assume the total amount of CAP Agricultural Water available for delivery in a given Year (after losses) = 1,000,000 AF.
2. Assume RWCD's percentage entitlement under Subarticle 4.13(a) of the Subcontract = 5.98%.
3. RWCD's total entitlement to Agricultural Water in such Year under Subarticle 4.13(a) of the Subcontract = 59,800 AF.  
(5.98% X 1,000,000 AF = 59,800 AF)
4. Cities' entitlement under Paragraph 2 of the Assignment = the lesser of:
  - (a) 5,000 AF, or
  - (b) 59,800 AF - 8,000 AF = 51,800 AF
5. RWCD's balance = 54,800 AF.



EXAMPLE 2

1. Assume the total amount of CAP Agricultural Water available for delivery in a given Year (after losses) = 450,000 AF.
2. Assume RWCD's percentage entitlement under Subarticle 4.13(a) of the Subcontract = 2.89%.
3. RWCD's total entitlement to Agricultural Water in such Year under Subarticle 4.13(a) of the Subcontract = 13,005 AF.  
(2.89% X 450,000 AF = 13,005 AF)
4. Cities' entitlement under Paragraph 2 of the Assignment = the lesser of:
  - (a) 5,000 AF, or
  - (b) 13,005 AF - 8,000 AF = 5,005 AF.
5. RWCD's balance = 8,005 AF.

EXAMPLE 3

1. Assume the total amount of CAP Agricultural Water available for delivery in a given Year (after losses) = 100,000 AF.
2. Assume RWCD's percentage entitlement under Subarticle 4.13(a) of the Subcontract = 2.89%.
3. RWCD's total entitlement to Agricultural Water in such Year under Subarticle 4.13(a) of the Subcontract = 2,890 AF.  
(2.89% X 100,000 AF = 2,890 AF)
4. Cities' entitlement under Paragraph 2 of the Assignment = 0.
5. Cities' entitlement under Paragraph 3 of the Assignment = 0 (because RWCD's entitlement is sufficient to provide for delivery to the Cities of at least 3,000 AF in any year in which the total supply is 450,000 AF or more -- See Example 2).

EXAMPLE 4

1. Assume the total amount of CAP Agricultural Water available for delivery in a given Year (after losses) = 450,000 AF.
2. Assume RWCD's percentage entitlement under Subarticle 4.13(a) of the Subcontract = 2.44%.
3. RWCD's total entitlement to Agricultural Water in such Year under Subarticle 4.13(a) of the Subcontract = 10,980 AF.  
$$(2.44\% \times 450,000 \text{ AF} - 10,980 \text{ AF})$$
4. Cities' entitlement under Paragraph 2 of the Assignment = the lesser of:
  - (a) 5,000 AF, or
  - (b)  $10,980 \text{ AF} - 8,000 \text{ AF} = 2,980 \text{ AF}$ .
5. Cities' entitlement under Paragraph 3 of the Assignment =
  - (a) IF 2.44% is a result of a reduction in eligible acreage in RWCD's service area:  
$$\text{Cities' entitlement} = 3,000 \text{ AF} - 2,980 \text{ AF} = 20 \text{ AF}$$
$$\text{CITIES' TOTAL} = 3,000 \text{ AF}$$
  - (b) IF 2.44% is not a result of a reduction in eligible acreage in RWCD's service area, Cities' entitlement under Paragraph 3 of the Assignment = 0  
$$\text{CITIES' TOTAL} = 2,980 \text{ AF}$$

EXAMPLE 5

1. Assume the total amount of CAP Agricultural Water available for delivery in a given Year (after losses) = 100,000 AF.
2. Assume RWCD's percentage entitlement under Subarticle 4.13(a) of the Subcontract = 2.44%.
3. RWCD's total entitlement to Agricultural Water in such Year under Subarticle 4.13(a) of the Subcontract = 2,440 AF.  
(2.44% X 100,000 AF = 2,440 AF)
4. Cities' entitlement under Paragraph 2 of the Assignment = 0.
5. Cities' entitlement under Paragraph 3 of the Assignment:
  - (a) IF 2.44% is a result of a reduction in eligible acreage in RWCD's service area, Cities' entitlement = 3,000 AF.
  - (b) RWCD's contribution = 2.44% X 3,000 AF = 73 AF.
  - (c) RWCD's net entitlement = 2,440 AF - 73 AF = 2,367 AF.
  - BUT
  - (d) If 2.44% is not a result of a reduction in eligible acreage in RWCD's service area, Cities' entitlement under Paragraph 3 of the Assignment = 0.



## **SRPMIC Settlement**

### **Exhibit C for Exhibits 3.h.1 to 3.h.7**

#### **Table 1**

**Total CAP Water Available to M&I: 443,067 acre-feet**

#### **Table 2**

**Total CAP Water Available to M&I: 218,338 acre-feet**

**Total CAP Water Available to M&I:**

443,067 A

**SRPMIC Agreement Water Calculations**

• Total Agreement Water Purchased:

22,000

• Losses Attributable to Agreement Water:

2,088

Total Agreement Water Credit:

19,912 B

Sum of SRPMIC Agreement Entitlements:

26,000 C

Total Water Available to M&amp;I (A + B):

462,979

Total of M&amp;I Entitlements (C + 638,823):

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Percent of Total M&amp;I Entitlements Avail for Delivery

(A + B)/(C + 638,823):

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Tucson	148,420	23.23%	0.00%	0	102,595	103,359
<b>Total</b>				26,000		

No Adverse Impact on Indians.

\* Distribution of all water available to M&amp;I in accordance with new M&amp;I shortage percentage as follows:

$$(X+Y)*[(A+B)/(C+638,823)]$$

where

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\* Distribution of all water available to M&amp;I in accordance with new M&amp;I shortage percentage as follows:

$$(X+Y) * [(A+B)/(C+638,823)]$$

where

X = entity's original CAP allocation (AF)  
 Y = entity's SRPMIC agreement entitlement (AF)  
 A = total CAP water available to M&I (AF)  
 B = agreement water purchased less losses (AF)  
 C = sum of SRPMIC agreement entitlements (AF)  
 638,823 = sum of original CAP M&I allocations (AF)



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EXHIBIT "3.i."

RWCD CAP Water Service Subcontract Amendment  
and Superior Court Decree Validating Subcontract

(Decree to be Supplied)

SUPERIOR COURT DECREE  
not available as of the date the  
Settlement Agreement was executed

ADDENDUM A

(With Settlement of Indian Claims)

The following is substituted for Subarticle 4.3(i):  
"Agricultural Water made available hereunder for eligible lands may be converted to M&I purposes if and to the extent that such water is no longer required by the Subcontractor for irrigation purposes and shall be converted in all cases where eligible lands receiving Project Agricultural Water have been converted to M&I use; Provided, That this right of conversion shall not be exercised within the areas jointly within RWCD and the CAP planning areas of Chandler, Gilbert, or Mesa, as used by Arizona Department of Water Resources (DWR) in recommending to the Contracting Officer the initial M&I water allocations to those cities (a map depicting such areas for Chandler, Gilbert, and Mesa, is attached to this Addendum as Exhibit A) until it is determined by the Contracting Officer that any portion of surface water appurtenant to such land has become permanently unavailable for use on those acres, by reason of the expiration, termination, non-renewal, or amendment of any presently existing contract or subsequent contract concerning supply of surface water to which the Subcontractor is a party, or by reason of any breach by or refusal or failure of any other contracting party to perform such contract, or by reason of any position taken by any such other contracting party as to the meaning of any such contract, or by reason of any settlement agreement, final judgment or decree of any court of competent jurisdiction which shall reduce the amount of water delivered under any such contract, in which event conversion rights may be exercised within such joint areas to the extent permitted by the following formula:

For a given acre, conversion = 1 acre-foot per  
acre minus (A plus B)

A = the average amount of surface water  
(after the extent of permanent unavailability  
has been determined) actually available to each  
of RWCD's eligible acres (not including spill  
water and not including surface water RWCD has  
agreed to contribute to the settlement of the  
water claims of the Salt River Pima-Maricopa  
Indian Community ["SRPMIC"] or the Ft. McDowell  
Indian Community ["FMIC"]) expressed in acre-  
feet per acre.

B\* = the amount of CAP M&I water available  
to an RWCD eligible acre by virtue of the  
initial M&I allocations to Chandler, Gilbert,  
or Mesa, plus the amount of permanently avail-  
able replacement surface water per acre, if

any, received by Chandler, Gilbert, or Mesa from any water settlement involving FMIC. B = C/D (expressed in acre-feet per acre).

C = the initial CAP M&I allocation for the applicable city or town, plus the amount of permanently available surface water, if any, received by Chandler, Gilbert or Mesa from any water settlement involving FMIC (expressed in acre-feet).

D = the number of acres within the CAP planning area used by DWR in recommending to the Contracting Officer the initial M&I allocation to the applicable city or town (expressed in acres).

\*Note: B must be determined with reference to the allocation of the city or town associated with the planning area wherein conversion is proposed to occur. B will not be the same number for each acre within RWCD.

For the purpose of the foregoing formula, "permanently available" shall mean the availability of such replacement surface water for a term of years or an extended term of years of substantially the same length as the term of the Project Water Lease Agreements described in Paragraph 19.0 of that agreement between the SRPMIC, the subcontractor, the United States of America, and other parties dated as of February 12, 1988 ("the SRPMIC Agreement"). Water received by the Cities of Chandler and Mesa and by the Town of Gilbert pursuant to Paragraphs 12.0 and 19.0 of the SRPMIC Agreement shall not be considered to be "permanently available" for purposes of the foregoing formula.

With respect to that area within the boundaries of RWCD but outside of the CAP planning areas used by DWR in recommending to the Contracting Officer the initial M&I allocations for Chandler, Gilbert, and Mesa, CAP agricultural water may be converted to CAP M&I use to the extent permitted by the following formula:

For a given acre, conversion = 1 acre-foot per acre minus A (as defined above).

Water converted from irrigation to M&I purposes as a result of the conversion of eligible lands to M&I uses shall be used only for M&I purposes within the service area of the entity responsible for serving the converted lands.

1           Execution of this subcontract by the Subcontractor does  
2 not constitute an admission that any reduction of water delivered  
3 to the Subcontractor under any existing or subsequent contract  
4 concerning surface water is or would be proper or lawful.

5           Conversion of water from agricultural to M&I purposes  
6 shall take effect only upon a finding that the conditions described  
7 above have been fulfilled and the execution or amendment of an  
8 appropriate subcontract among the United States, the Contractor,  
9 and the M&I user. All Project Water converted from agricultural to  
10 M&I use shall be delivered at the same water service charge per  
11 acre-foot as other M&I Water and with the same priority as other  
12 Project M&I Water; Provided, That the Contractor's charge to the  
13 Subcontractor for water service shall be adjusted to reflect the  
14 conversion to M&I uses."  
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EXHIBIT "A"

to  
Addendum A  
(Exhibit "3.i")







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EXHIBIT "3.j"

12

SRPMIC CAP Water Delivery Contract Amendment

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UNITED STATES  
DEPARTMENT OF THE INTERIOR  
OFFICE OF THE SECRETARY

FIRST AMENDMENT TO  
CENTRAL ARIZONA PROJECT INDIAN WATER DELIVERY CONTRACT  
BETWEEN THE UNITED STATES AND  
THE SALT RIVER PIMA-MARICOPA INDIAN COMMUNITY

1. PREAMBLE:

THIS AMENDMENT TO CONTRACT, made as of the 12th day of February, 1988, in pursuance of the Salt River Pima-Maricopa Indian Community Water Rights Settlement Act of 1988, P.L. 100-512, 102 Stat. 2549, is between the United States of America (hereafter "United States") and the Salt River Pima-Maricopa Indian Community (hereafter "Contractor") located on the Salt River Reservation, Arizona.

WITNESSETH, THAT:

2. EXPLANATORY RECITALS:

WHEREAS, the United States and the Contractor entered into a contract dated December 11, 1980, pursuant to which the United States agreed to deliver Central Arizona Project water in an amount not in excess of 13,300 acre-feet yearly for a term of 50 years subject to renewal (hereafter "CAP Delivery Contract");

WHEREAS, the United States, the Contractor, the State of Arizona, the Salt River Project Agricultural Improvement and Power District, the Salt River Valley Water Users' Association, the Roosevelt Water Conservation District, the Roosevelt Irrigation District, the Arizona Cities of Phoenix, Scottsdale, Glendale, Mesa, Tempe, and Chandler and the Town of Gilbert, and the Central

1 Arizona Water Conservation District, have entered into an Agreement  
2 dated as of February 12, 1988 (the "SRPMIC Agreement"), for the  
3 settlement of water claims in the Salt River Valley; and

4 WHEREAS, the SRPMIC Agreement provides in Paragraph 19.0 that  
5 the Contractor will lease for a term of 99 years commencing on  
6 January 1, 2000, and ending on December 30, 2098, to the Arizona  
7 Cities of Chandler, Glendale, Scottsdale, Tempe, Mesa, and Phoenix,  
8 and the Arizona Town of Gilbert, all of the water to which the  
9 Contractor is entitled under the CAP Delivery Contract; and

10 WHEREAS, the United States confirmed the SRPMIC Agreement and  
11 specifically authorized the amendment of the CAP Delivery Contract  
12 and the lease of the Contractor's rights to 13,300 acre-feet of  
13 Project Water to the Arizona Cities of Chandler, Glendale,  
14 Scottsdale, Tempe, Mesa, and Phoenix, and the Arizona Town of  
15 Gilbert; and

16 WHEREAS, the parties intend by this First Amendment to the CAP  
17 Delivery Contract to amend the CAP Delivery Contract as required by  
18 the Salt River Pima-Maricopa Indian Community Water Rights Settle-  
19 ment Act of 1988, P.L. 100-512;

20 NOW, THEREFORE, in consideration of the mutual covenants con-  
21 tained in this and other pertinent agreements between the parties,  
22 it is agreed as follows:

23 3. Paragraph 4.2 of the CAP Delivery Contract is amended in full  
24 to read as follows:

25 "4.2 Term of Contract. This contract shall  
26 become effective upon its execution and shall  
remain in effect until and including

December 31, 2008; Provided, that this contract may be renewed upon written request by Contractor upon terms and conditions of renewal to be agreed upon not later than one year prior to the expiration of this Contract."

4. Paragraph 4.3(e) shall be amended by adding a new 4.3(e)(3) as follows:

"(3) The Contractor may enter into Project Water Lease Agreements with the Arizona Cities of Chandler, Glendale, Mesa, Phoenix, Scottsdale, and Tempe, and the Arizona Town of Gilbert for terms commencing January 1, 2000, and ending December 30, 2008, in accordance with the Project Water Lease Agreements entered into among the Contractor, the Lessees and the United States. The United States shall deliver Contractor's Project Water to the Lessees as provided in the Project Water Lease Agreements with such Lessees; however, neither the Secretary nor CAWCD shall be obligated to make such deliveries if, in the judgment of CAWCD or the Secretary, delivery or schedule of deliveries to the Lessees would limit deliveries of CAP water to other CAP Subcontractors to a degree greater than would deliveries to Contractor. To the extent that the provisions of the Project Water Lease Agreements are contrary to the provisions of this contract, the provisions of the Project Water Lease Agreements shall control."

5. Paragraph 6 shall be amended by adding a new Paragraph 6(e) as follows:

"(e) The United States shall not impose upon the Contractor the OM&R charge set forth in Section 7(b) or any other charge with respect to the Project Water delivered or required to be delivered to a Lessee pursuant to Paragraph 4.3(e)(3) hereof."

6. Section 5 shall be amended by adding a new Section 5(e) as follows:

"(e) Substitute Water During Lease. No Substitute Water Contract shall be effective

1 during the term of a lease established by a  
2 Project Water Lease Agreement unless the Lessee  
3 gives written approval of such Substitute Water  
4 Contract."

- 5 7. Section 9 shall be amended by adding a new Section 9.11 as  
6 follows:

7 "9.11 Amendments and Modifications. No amend-  
8 ment or modification of this Contract shall be  
9 made which would impair the interests of the  
10 Lessees under the Project Water Agreements  
11 unless the Lessees give written approval for  
12 such amendment or modification."

- 13 8. In all other respects, the CAP Delivery Contract remains in  
14 full force and effect.

- 15 9. This First Amendment to the CAP Delivery Contract shall become  
16 effective after execution and on the enforceability date of  
17 the SRPMIC Agreement as set forth in Paragraph 21.6 thereof.

18 IN WITNESS WHEREOF, the parties have executed this First  
19 Amendment to the CAP Delivery Contract on the date written above.

20 THE UNITED STATES OF AMERICA

21 By: 

Office of the Secretary

22 SALT RIVER PIMA-MARICOPA INDIAN  
23 COMMUNITY

24 Attest: 

Secretary

25 By: 

Name: GERALD ANTON

Title: PRESIDENT



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EXHIBIT "3.k."

RID, City of Phoenix, SRPMIC  
and SRP Water Exchange Agreement

EXHIBIT "B.K."

AGREEMENT NO. \_\_\_\_\_

RID, CITY OF PHOENIX, SRPMIC, AND SRP  
WATER EXCHANGE AGREEMENT

1. PARTIES. The parties to this Agreement are the City of Phoenix, hereinafter called "Phoenix;" the Roosevelt Irrigation District, hereinafter called "RID;" the Salt River Project Agricultural Improvement and Power District and the Salt River Valley Water Users' Association, hereinafter called "SRP;" and the Salt River Pima-Maricopa Indian Community, hereinafter called "SRPMIC."

2. RECITALS. This Agreement is made with reference to the following:

2.1 The parties recognize the desirability of reclaiming and beneficially reusing effluent from Phoenix' 23rd Avenue Wastewater Treatment Plant.

2.2 In order to effectuate the reuse of the reclaimed effluent, Phoenix, RID, and SRP have agreed as set forth herein to a three-way exchange of water to their mutual benefit.

2.3 The exchange will consist of Phoenix constructing, operating and maintaining a system to renovate secondarily treated effluent from the 23rd Avenue Wastewater Treatment Plant (WWTP) and delivering the reclaimed effluent to the RID for its unrestricted agricultural use. Phoenix will use the Bouwer Recharge Land Treatment Process to renovate secondarily treated effluent before discharge into the RID canal system.



1           2.4 RID will pump water of a quality acceptable for  
2 irrigation use without further treatment from its existing well  
3 system or transmission system for delivery to SRP. Phoenix will  
4 pay for the design and construction of certain parts of the system  
5 necessary to transfer the RID water to SRP. In addition, Phoenix  
6 will pay for certain of the operation, maintenance, repair and  
7 replacement costs for transferring the RID water to SRP.

8           2.5 SRP will deliver water annually to any present or  
9 future Phoenix water treatment plant connected to the SRP water  
10 delivery system for use by Phoenix, and will also deliver water to  
11 SRPMIC for its use.

12           2.6 The parties hereto have executed or will execute  
13 simultaneously with this Agreement an agreement providing for the  
14 settlement of certain water claims and disputes between them,  
15 which agreement is herein referred to as the SRPMIC Agreement.

16           2.7 The parties hereto desire to prescribe the prin-  
17 ciples which shall govern the respective interests, obligations  
18 and responsibilities of RID, Phoenix, SRP, and SRPMIC in and to  
19 the water exchange described herein (hereinafter referred to as  
20 "RID Exchange").

21           2.8 The parties hereto desire that this Agreement be  
22 designated Exhibit "3.k" as it is referred to in Paragraph 11.0 of  
23 the SRPMIC Agreement.

24           3. AGREEMENT. NOW, THEREFORE, in consideration of the  
25 respective rights, privileges and obligations of the parties  
26 hereinafter set forth, IT IS AGREED as follows:

1           4.   EFFECTIVE DATE.   This Agreement shall become effective  
2 after execution and on the enforceability date of the SRPMIC  
3 Agreement as set forth in Paragraph 21.6 thereof. All covenants,  
4 rights and obligations of this Agreement are enforceable on said  
5 date unless otherwise provided for herein.

6           5.   DEFINITIONS.

7               5.1   Bouwer Recharge Land Treatment Process:   The  
8 process for renovation of secondarily treated effluent from the  
9 23rd Avenue Wastewater Treatment Plant by a method of rapid  
10 infiltration as described in a report by Herman Bouwer dated  
11 January, 1984 as published by the U.S. Department of Agriculture.

12               5.2   Regulations for the Reuse of Wastewater:   Regula-  
13 tions published by the Department of Health Services in the State  
14 of Arizona Official Compilation of Administrative Rules and Regu-  
15 lations, Version 6-30-85, Article IV, R9-20-401 et seq., attached  
16 hereto as Exhibit "B."

17  
18           6.   CONSTRUCTION, OPERATION, MAINTENANCE AND ACCOUNTING -  
19               BOUWER RECHARGE LAND TREATMENT PROCESS.

20               6.1   Regarding the application of effluent to the Bouwer  
21 Recharge Land Treatment Process, withdrawal of such reclaimed  
22 effluent, the transmission of such reclaimed effluent to the RID  
23 canal system and the transmission and use of such reclaimed  
24 effluent by RID and its customers:

25               6.1.1   Phoenix will recharge into the ground using  
26 the Bouwer Recharge Land Treatment Process secondarily treated  
effluent from its 23rd Avenue Wastewater Treatment Plant. In

1 accordance with a method of delivery and pumping schedule as set  
2 forth in Exhibit "A" hereto, Phoenix will deliver reclaimed  
3 effluent to the RID at a point or points in the RID Canal. RID's  
4 obligation to accept reclaimed effluent will be conditioned upon  
5 the reclaimed effluent being suitable for unrestricted agri-  
6 cultural use without further treatment at the time and place of  
7 delivery to RID. Phoenix shall not be obligated to treat effluent  
8 to any standard higher than the standard for unrestricted agri-  
9 cultural use attached as Exhibit "B" hereto, and RID shall not be  
10 obligated to accept reclaimed effluent with any regulation,  
11 restriction or requirements thereof other than the Regulation for  
12 Reuse of Wastewater attached as Exhibit "B." Reclaimed effluent  
13 delivered by Phoenix to RID must be delivered in such increments  
14 and at such times that it can be fully utilized by RID for  
15 satisfaction of its then existing needs.

16 6.1.2 Phoenix will design, construct, operate and  
17 maintain the recharge basins, canals, pumps and facilities neces-  
18 sary to apply effluent to the Bouwer Recharge Land Treatment  
19 Process, to withdraw such reclaimed effluent and to transmit and  
20 place such reclaimed effluent into the RID canal system.

21 6.1.3 Phoenix will pay all costs associated with the  
22 design, construction, operation, maintenance, repair and replace-  
23 ment of the Bouwer Recharge Land Treatment Process, withdrawal of  
24 reclaimed effluent and transmission and placement of such  
25 reclaimed effluent into the RID canal system.

26 . . . .

1                   6.1.4 RID will construct, operate and maintain its  
2 canal system necessary to receive the reclaimed effluent and, if  
3 necessary, enlarge the existing canal system to accept the  
4 increased flows from the reclaimed effluent delivered by Phoenix  
5 to RID.

6                   6.1.5 After delivery by Phoenix of the reclaimed  
7 effluent into the RID canal system at the delivery point  
8 identified in Exhibit "C" hereto, RID will pay all costs asso-  
9 ciated with the design, construction, operation and maintenance of  
10 its canal system necessary for the transmission of the reclaimed  
11 effluent to its customers except as follows:

12                   6.1.5.1 To the extent that RID has incurred  
13 or incurs design and construction costs to enlarge its canal  
14 system to accept the increased flows for the transmission of the  
15 reclaimed effluent, Phoenix will pay to RID the costs incurred.  
16 Phoenix' obligation to pay for the enlargement of the canal  
17 capacity to receive the reclaimed effluent shall not include any  
18 cost for betterment of the canal system beyond that necessary to  
19 receive the increased flows for the reclaimed effluent.

20                   6.1.5.2 RID shall not be required to in-  
21 crease its annualized costs in excess of \$5,000 per year as a  
22 result of additions to or modifications of RID's transmission or  
23 distribution system used to serve RID's customers, or any changes  
24 in its operation, necessitated by the application of the Regu-  
25 lation for Reuse of Wastewater attached hereto as Exhibit "B."  
26 If such annualized costs exceed \$5,000 per year, RID and Phoenix

1 shall attempt to resolve the issue of who, if anyone, should pay  
2 such increased costs; provided, however, Phoenix shall have the  
3 right but not the duty to assume all such cost increases in excess  
4 of \$5,000 per year. If Phoenix exercises such right and pays such  
5 increased costs, then RID shall make all such additions, modifi-  
6 cations or changes as necessary to conform to the Regulations for  
7 Reuse of Wastewater attached hereto as Exhibit "B." Subject to  
8 the provisions set forth in this subsection, RID and Phoenix shall  
9 have the right to terminate this Agreement if such annualized  
10 costs exceed \$5,000 per year and the payment of such increased  
11 cost is not resolved as provided herein.

12 6.1.6 Prior to the start of construction of the  
13 enlargements to RID's existing canal system pursuant to Paragraph  
14 6.1.4 hereof, RID shall submit the plans and specifications to  
15 Phoenix for its concurrence. RID will obtain competitive bids for  
16 construction of any such enlargement to RID's existing canal  
17 system. Prior to award of the construction contract, RID will  
18 obtain the approval of Phoenix of the amount which is eligible for  
19 reimbursement under the terms of this Agreement.

20 6.2 The amount of reclaimed effluent delivered by  
21 Phoenix to RID pursuant to Paragraph 6.1.1 hereof will be 91  
22 percent of the amount of water RID will deliver to SRP pursuant to  
23 Paragraph 7.2 hereof. Phoenix will deliver to RID no more than  
24 30,030 acre-feet in any calendar year.

25 6.3 As RID receives reclaimed effluent from Phoenix  
26 pursuant to Paragraph 6.1.1 hereof, RID will credit the SRP water

1 delivery account created for this exchange in the amount of 1.1  
2 acre-feet for each acre-foot of reclaimed effluent RID receives  
3 from Phoenix. SRP may not overdraw this account in anticipation  
4 of accruing future credits.

5 6.4 Phoenix' obligation to deliver any specific amount  
6 of reclaimed effluent pursuant to the provisions of this Paragraph  
7 6 will be subject to previously existing contractual obligations  
8 including, but not limited to, Agreement No. 13904 between the  
9 Cities of Glendale, Mesa, Phoenix, Scottsdale and Tempe and the  
10 Town of Youngtown and Arizona Public Service Company and SRP.

11  
12 7. CONSTRUCTION, OPERATION, MAINTENANCE AND ACCOUNTING -  
13 RID DELIVERY OF RID WATER INTO SRP FACILITIES.

14 7.1 Regarding RID's pumping and delivery of RID's water  
15 into the SRP transmission and distribution system:

16 7.1.1 RID will operate and maintain necessary wells,  
17 will construct, operate and maintain necessary replacement wells,  
18 and will design, construct, operate and maintain necessary trans-  
19 mission systems required to produce and deliver the RID water into  
20 SRP's transmission and distribution system.

21 7.1.2 RID will pay all costs associated with design,  
22 construction, operation and maintenance required to deliver RID  
23 water to SRP except for the following:

24 7.1.2.1 Phoenix shall pay RID's design and  
25 construction costs and any future repair and replacement costs for  
26 that part of RID's transmission system necessary to transfer RID's  
water to SRP's transmission and distribution system (hereinafter

1 "RID to SRP Transmission System"). The RID to SRP Transmission  
2 System referred to herein includes lift pumps, canal enlargements,  
3 pipelines and other improvements which are added to the RID trans-  
4 mission system in order to deliver RID's water to SRP's transmis-  
5 sion and distribution system.

6 7.1.2.2 Phoenix shall pay for the installa-  
7 tion and any future repair and replacement costs of metering  
8 devices installed on RID's pumps.

9 7.1.2.3 Subject to Paragraph 10.1 hereof,  
10 Phoenix shall pay 50% of all operation, maintenance and repair  
11 costs incurred by RID in operating and maintaining the well system  
12 and RID to SRP Transmission System necessary pursuant to this  
13 Agreement.

14 7.1.2.3.1 It is expressly understood that  
15 water quality monitoring tests and pump tests are considered as a  
16 part of the operation and maintenance costs in which Phoenix shall  
17 participate by paying 50%.

18 7.1.2.3.2 It is expressly understood that  
19 well replacement costs, for the drilling of a new well or replace-  
20 ment well in the same location, are not part of the operation,  
21 maintenance and repair costs in which Phoenix will participate.

22 7.1.3 Prior to the start of construction of the RID  
23 to SRP Transmission System, RID shall submit the plans and  
24 specifications to Phoenix and SRP for their concurrence. SRP  
25 shall submit its concurrence to RID and Phoenix within 30 days  
26 of receipt of such plans and specifications; failure to respond

1 within this time period shall constitute concurrence. RID will  
2 obtain competitive bids for construction of the RID to SRP Trans-  
3 mission System. Prior to award of the construction contract RID  
4 will obtain the approval of Phoenix of the amount which is  
5 eligible for reimbursement under the terms of this Agreement.

6 7.1.4 Except in the case of emergency as determined  
7 by RID, prior to incurring replacement costs which may be eligible  
8 for reimbursement under the terms of this Agreement, RID will  
9 obtain the prior concurrence of Phoenix for such costs which  
10 exceed \$5,000.

11 7.2 In accordance with the method of implementation and  
12 scheduling of pumping and deliveries set forth in Exhibit "D"  
13 hereto, RID will deliver to SRP water of a quality acceptable for  
14 irrigation use without further treatment which it has pumped pur-  
15 suant to its entitlements described in Paragraph 11.1 of the  
16 SRPMIC Agreement. This RID water then will be delivered by SRP  
17 for unrestricted irrigation uses on lands served by SRP. SRP will  
18 use its best efforts to use the RID water taking into account  
19 water quality and the demand of its agricultural irrigation users.  
20 The amount of water delivered by RID to SRP in any calendar year,  
21 without a guarantee of minimum quantity to be taken by SRP, will  
22 be the lesser of: (a) 33,000 acre-feet; (b) 110 percent of the  
23 quantity of reclaimed effluent ordered by RID which Phoenix  
24 delivers to RID; or (c) the quantity of water RID provides to SRP  
25 for agricultural purposes at the times and flows requested by  
26 SRP. RID will deliver to SRP no more than 1.1 acre-foot for each



1 acre-foot RID receives from Phoenix, and RID will deliver to SRP  
2 no more than 33,000 acre-feet in any calendar year. The daily  
3 deliveries to SRP by RID may be limited to the amount of water the  
4 RID facilities can deliver, at the times and locations requested  
5 by SRP, without impeding RID's ability to fully satisfy RID's and  
6 RID's customers' then existing water delivery needs. In the event  
7 SRP is unable to obtain the approvals or permits referred to in  
8 Paragraph 9.1.4 hereof, SRP shall not be obligated to participate  
9 in the RID Exchange.

10 8. SRP DELIVERY OF WATER TO PHOENIX AND SRPMIC.

11 8.1 As SRP receives water from RID pursuant to Para-  
12 graph 7 hereof, SRP will credit Phoenix and SRPMIC water delivery  
13 accounts created for this exchange on the basis of .91 acre-foot  
14 for each acre-foot SRP received from RID. The exchange credits  
15 will accrue at the RID pump outlets. SRP shall allocate credits  
16 in these accounts on the basis of two-thirds of the credits to  
17 Phoenix and one-third of the credits to SRPMIC. Deliveries of  
18 surface water by SRP to Phoenix and SRPMIC pursuant to this Para-  
19 graph 8.1 shall be deducted on an acre-foot for acre-foot basis  
20 from those credits. SRP will deliver water to Phoenix pursuant to  
21 this Agreement at any present or future Phoenix water treatment  
22 plant connected to SRP canals.

23 8.2 The principal provisions governing Phoenix and  
24 SRPMIC water delivery exchange accounts maintained by SRP are as  
25 follows:

26 . . . .

1           8.2.1 Neither Phoenix nor SRPMIC may overdraw its  
2 account in anticipation of accruing future credits;

3           8.2.2 The maximum withdrawal by SRPMIC in any year  
4 will be 10,010 acre-feet;

5           8.2.3 All credits in SRPMIC's account at the end of  
6 the calendar year in excess of 10,000 acre-feet will be deducted  
7 from the SRPMIC account and credited to Phoenix's account at the  
8 close of business on the last day of the calendar year;

9           8.2.4 All credits in the Phoenix account at the end  
10 of the calendar year in excess of 20,000 acre-feet will be  
11 deducted from the Phoenix account and credited to the SRPMIC  
12 account on the first day of the next calendar year;

13           8.2.5 The maximum carryover in the SRPMIC account,  
14 including Phoenix credits transferred to SRPMIC, at the beginning  
15 of any calendar year shall be 10,000 acre-feet;

16           8.2.6 The maximum carryover in the Phoenix account  
17 at the beginning of any calendar year shall be 20,000 acre-feet;

18           8.2.7 To the extent water is not used or carried  
19 over in accordance with these provisions, it will become SRP  
20 stored water. Phoenix and SRPMIC carryover entitlements under  
21 this Paragraph 8.2 shall spill as provided in Paragraph 21.9 of  
22 the SRPMIC Agreement. Monthly evaporation will be charged against  
23 Phoenix and SRPMIC water delivery exchange accounts at the rate of  
24 one-half of one percent (0.5%) of the water balance carried  
25 forward at the end of each month.

26 . . . .

1           9.    OBTAINING NECESSARY AND APPLICABLE GOVERNMENT APPROVALS  
2                    AND PERMITS.

3                   9.1   RID, Phoenix, SRPMIC and SRP agree that as condi-  
4   tions precedent to the enforcement of the specific rights and  
5   duties pertaining to this RID Exchange, it will be necessary that  
6   many of the aspects of the proposed exchange be reviewed and  
7   approved by Federal, State or other governmental agencies. In  
8   order to obtain all necessary and applicable governmental  
9   approvals and permits, Phoenix, RID, SRP and SRPMIC, with the full  
10   cooperation of each other, agree to use their best faith efforts  
11   to obtain any required permits and approvals including the  
12   following:

13                9.1.1   Phoenix will be responsible for obtaining all  
14   permits or approvals to discharge its effluent from the 23rd  
15   Avenue Wastewater Treatment Plant, to apply such effluent to the  
16   Bouwer Recharge Land Treatment Process, to withdraw such reclaimed  
17   effluent and to transport and place such reclaimed effluent into  
18   the RID canal system;

19                9.1.2   RID will be responsible for obtaining all  
20   permits or approvals required regarding the pumping of its water  
21   into the SRP transmission and distribution facilities;

22                9.1.3   Phoenix and RID will be responsible for  
23   obtaining all permits or approvals required regarding the appli-  
24   cation of such reclaimed effluent for unrestricted agricultural  
25   uses, as provided in this Agreement;

26   . . . .

1           9.1.4 SRP shall be responsible for obtaining  
2       approvals or permits from DWR necessary to allow SRP to deliver to  
3       SRP shareholders and contract users RID Exchange water in amounts  
4       of 10 percent above the then-existing water duties on the lands to  
5       which such exchange water may be applied; provided, however, any  
6       additional water delivered to satisfy an increased water duty  
7       obtained pursuant to this Agreement shall be limited to RID  
8       Exchange water. In the event of a final, non-appealable DWR  
9       determination that SRP shareholders and contract users are  
10      entitled to apply amounts of RID Exchange Water less than the ten  
11      percent above the then-existing water duties, then and in that  
12      event SRP shall have the right, but not the obligation, to accept  
13      such DWR determination, subject to the right of SRP to receive the  
14      total of ten percent for use on any SRP lands.

15           9.1.5 In accordance with the provisions of this  
16      Agreement, including but not limited to the permit requirements  
17      hereof, Phoenix, RID, SRP and SRPMIC further agree to expedite all  
18      permitting, design and construction activities required to imple-  
19      ment the RID Exchange.

20           9.2 With respect to the permit and approval require-  
21      ments of Paragraph 9.1 of the Agreement, Phoenix and RID agree as  
22      follows:

23           9.2.1 In seeking permits and approvals, Phoenix will  
24      provide to the permitting authorities the requested information  
25      and expertise concerning the quality of the reclaimed effluent  
26      delivered to RID for unrestricted agricultural uses; and

1           9.2.2 In seeking permits and approvals, RID will  
2 provide the permitting authorities required information and exper-  
3 tise concerning the application of such reclaimed effluent for  
4 unrestricted agricultural uses.

5           10.    RID BUDGET.

6           10.1 RID will provide to Phoenix an Annual Operating  
7 Budget. The Annual Operating Budget will provide RID's estimate  
8 of operating, maintenance and repair costs, on a per acre foot or  
9 other mutually acceptable basis, expected to be incurred by RID in  
10 operating and maintaining the well system and RID to SRP Transmis-  
11 sion System necessary pursuant to this Agreement.

12           10.2 Except in the case of emergency as determined by  
13 RID, RID will seek the prior approval of Phoenix of operation,  
14 maintenance and repair costs which RID expects will, on an aggre-  
15 gate basis, exceed the Operating Budget by 25% per acre foot.

16           11.    REQUEST FOR PHOENIX APPROVALS.       Unless       otherwise  
17 mutually agreed, Phoenix's responses to RID's requests for con-  
18 currence or approval required herein shall be in writing.  
19 Requests for concurrence or approval required herein, not acted  
20 upon by Phoenix within 30 days of the date submitted by RID, shall  
21 be deemed approved.

22           12.    INTEREST ON BILLINGS.   Amounts payable herein by Phoenix  
23 to RID shall be rendered no later than 30 days after the bill is  
24 postmarked. Phoenix shall pay to RID interest, at the same rate  
25 Phoenix charges its delinquent taxpayers, for payments not  
26 received 30 days after bills are postmarked.

1           13.    DISPOSITION OF IMPROVEMENTS ON TERMINATION.

2                   13.1 With respect to improvements made to RID's well and  
3 transmission systems necessary to implement and operate this RID  
4 Exchange, Phoenix and RID agree:

5                       13.1.1 On or before 180 days after the termination of  
6 this Agreement, RID shall provide to Phoenix a list or other  
7 written identification of certain removable components of RID's  
8 transmission system, such as lift pumps, pipelines and metering  
9 devices installed on RID's transmission system and necessary to  
10 implement this RID Exchange, which RID desires to salvage or use  
11 for purposes other than this RID Exchange. On or before 60 days  
12 after RID provides Phoenix with its list or other identification  
13 of the certain removable components, RID and Phoenix shall agree  
14 on the amount RID may refund to Phoenix for such removable compo-  
15 nents. As to those removable components not identified by RID and  
16 which RID and Phoenix do not reach agreement as to the amount of  
17 refund, provided such may be fully removed by Phoenix without  
18 damaging RID's or RID's customers' property and without impeding  
19 RID's and RID's customers' then-existing water delivery needs,  
20 upon 30 days' prior written notice to RID, Phoenix will be given  
21 the opportunity by RID to fully remove such components. All  
22 property affected by Phoenix's removal of such components shall be  
23 restored by Phoenix to the same or better condition existing prior  
24 to Phoenix's removal of the removable components.

25           . . . .

26           . . . .

1           13.1.2 RID is not obligated to pay and Phoenix is not  
2 entitled to receive any refund or payment for the design, con-  
3 struction, maintenance, repair or replacement of:

4                   13.1.2.1 Any part of RID's well system;

5                   13.1.2.2 Any component of RID's transmission  
6 system which Phoenix cannot remove pursuant to the terms of sub-  
7 paragraph 13.1.1 hereof;

8                   13.1.2.3 Any component not identified by RID  
9 and mutually priced by Phoenix and RID pursuant to the terms of  
10 subparagraph 13.1.1 hereof; or

11                   13.1.2.4 Any nonremovable component of RID's  
12 transmission system.

13           13.1.3 All facilities necessary to implement this RID  
14 Exchange, except those certain components removed by Phoenix in  
15 accordance with subparagraph 13.1.1 hereof, may be disposed of by  
16 RID.

17       14.    TERMINATION. It is expressly anticipated by the parties  
18 that this RID Exchange will gradually phase out as SRP share-  
19 holders' agricultural lands receiving the RID Exchange water are  
20 urbanized or upon expiration of RID's contractual relationship  
21 with SRP as described in Paragraph 11.1 of the SRPMIC Agreement,  
22 whichever occurs first.

23       15.    UNCONTROLLABLE FORCES. No party hereto shall be consid-  
24 ered to be in default in the performance of any of the obligations  
25 hereunder if failure of performance shall be due to an uncontrol-  
26 lable force. The term "uncontrollable force" shall mean any cause

1 beyond the control of the party affected, including but not  
2 limited to failure of facilities, flood, earthquake, tornado,  
3 storm, fire, lightning, epidemic, war, riot, civil disturbance or  
4 disobedience, labor dispute, and action or nonaction by or failure  
5 to obtain the necessary authorizations or approvals from any  
6 governmental agency or authority or the electorate, labor or  
7 material shortage, sabotage and restraint by Court order or public  
8 authority, which by exercise of due diligence and foresight such  
9 party could not reasonably have been expected to avoid and which  
10 by exercise of due diligence it shall be unable to overcome.

11 Nothing contained herein shall be constructed so as to require  
12 either party to settle any strike or labor dispute in which it may  
13 be involved. Either party rendered unable to fulfill any obliga-  
14 tion by reason of an uncontrollable force shall exercise due  
15 diligence to remove such inability with all reasonable dispatch.

16 16. COUNTERPARTS. This Agreement may be executed in dupli-  
17 cate originals, each of which shall constitute an original Agree-  
18 ment.

19 17. SUCCESSION. This Agreement shall inure to the benefit  
20 of and be binding upon the successors of the parties hereto;  
21 provided, however, this Agreement cannot be assigned without the  
22 written consent of the parties hereto. Any attempted assignment  
23 without obtaining such consent shall be void.

24 18. SECTION HEADINGS. Section headings in this Agreement  
25 are for convenience only and do not purport to accurately or  
26 completely describe the contents of any section. Such headings



are not to be construed as part of this Agreement or any way defining, limiting or amplifying the provisions hereof.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by the respective officers hereunto duly authorized.

CITY OF PHOENIX, a municipal  
corporation  
MARVIN A. ANDREWS, City Manager

By \_\_\_\_\_

ATTEST:

Vicky Mial

City Clerk

APPROVED AS TO FORM AND  
WITHIN THE POWERS AND  
AUTHORITY GRANTED UNDER  
THE LAWS OF ARIZONA TO  
THE CITY OF PHOENIX:

[Signature]  
City Attorney

ROOSEVELT IRRIGATION DISTRICT

By \_\_\_\_\_

~~its President~~ Board Member

ATTEST:

[Signature]  
Secretary

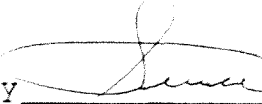

APPROVED AS TO FORM AND  
WITHIN THE POWERS AND  
AUTHORITY GRANTED UNDER  
THE LAWS OF ARIZONA TO SRP:

Attorney


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SALT RIVER PIMA-MARICOPA  
INDIAN COMMUNITY

By    
Its President

ATTEST:

  
Secretary

APPROVED AS TO FORM AND  
WITHIN THE POWERS AND  
AUTHORITY GRANTED UNDER  
THE CONSTITUTION AND LAWS  
OF SRPMIC:


  
Attorney

EXHIBIT "A"  
PHOENIX - RID  
RECLAIMED EFFLUENT DELIVERY SCHEDULE

Section 1. Pursuant to Paragraph 11 and Exhibit 3.k. of the SRPMIC Agreement, reclaimed effluent delivered by Phoenix to RID shall be in accordance with RID's request as defined in Section 2, except for:

- (a) interruptions or reductions due to uncontrollable forces;
- (b) temporary interruptions or reductions which, in the opinion of the City of Phoenix, are necessary or desirable for the purposes of maintenance, repairs, replacements, installations, investigations and inspections of the City of Phoenix equipment and facilities, provided that the City of Phoenix, except in case of emergency as determined by the City of Phoenix, will give RID reasonable advance notice of temporary interruptions or reductions and will attempt to remove the cause thereof with diligence. Provided further, in no event shall any liability accrue against the City of Phoenix, its officers, agents and employees by reason of any such interruptions or reductions in the delivery of reclaimed effluent hereunder, nor shall RID be entitled to any compensation or reimbursement for any such interruptions or reductions.

Section 2. Reclaimed effluent deliveries hereunder to RID shall be made at RID's request, provided that requests for delivery, or changes in amount of delivery, shall be made by RID twenty-four (24) hours in advance of the delivery date and prior to three o'clock p.m. on the day such request is made. Unless otherwise mutually agreed in writing, RID's request for delivery

...

1 shall be made by RID's authorized representative to the Superin-  
2 tendent of Wastewater Treatment of the City of Phoenix and may be  
3 verbal, or in writing, provided verbal requests are confirmed  
4 monthly in writing mailed to the City of Phoenix at 23rd Avenue  
5 Wastewater Treatment Plant, 23rd Avenue and Durango, Phoenix,  
6 Arizona. RID's requests, both written and verbal, shall specify  
7 the amount of reclaimed effluent being requested as well as the  
8 time the delivery is to be made. The amount of reclaimed effluent  
9 ordered shall not exceed 87.8 cubic feet per second.

10           Section 3. The dates and amounts of Phoenix's deli-  
11 veries shall be confirmed monthly in writing mailed to the  
12 Superintendent of RID at RID's Administrative Offices, P.O. Box  
13 94, Buckeye, Arizona 85326.

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Exhibit "B"  
Regulations for the Reuse of Wastewater

EXHIBIT "B"

CH. 20

WATER POLLUTION CONTROL

R9-20-401

ARTICLE 4. REGULATIONS FOR THE REUSE OF WASTEWATER

R9-20-401. Definitions

Definitions given in R9-8-312, R9-20-203, and applicable State statutes will apply to those words and phrases when used in this Article. In addition, the following apply:

1. "Reuse of reclaimed wastewater" means the use of reclaimed wastewater transported from the point of treatment to the point of use without an intervening discharge to the surface waters of the State for which water quality standards have been established.
2. "Effluent" means wastewater that has completed its passage through a wastewater treatment plant.
3. "Gray water" means wastewater that originates from clothes washers, dishwashers, bathtubs, showers, and sinks, except kitchen sinks and toilets.
4. "Industrial wastewater" means all wastes that enter a collection, treatment or disposal system from an industrial process.
5. "Irrigation" means the application of water or wastewater or both for growing agricultural crops or for landscaping purposes.
6. "NPDES permit" means a permit issued by the United States Environmental Protection Agency for discharge to the waters of the United States as required by the Clean Water Act, as amended.
7. "On-site wastewater treatment plant" encompasses all of the processes, devices, structures, and earthworks used for treating wastewater for disposal and reuse other than septic tanks with a hydraulic capacity less than two thousand (2,000) gallons per day that possess a N.S.F. Class I rating.
8. "Open access" means that access to the reuse site by the general public is uncontrolled.

9. "Partially treated wastewater" means wastewater which has received a minimum of primary treatment but does not meet the allowable limits contained in R9-20-403 for release to a reuse, or for discharge into the waters of the United States.

10. "Primary treatment" is a treatment process which accomplishes removal of sewage solids by physical means so that the effluent contains no more than 10 milligram of settleable solids per liter of wastewater.

11. "Reclaimed wastewater" is effluent which meets the standards for the specific reuses contained in R9-20-403.

12. "Restricted access" means that the access to the reuse site by the general public is controlled.

13. "Reuse" means the use of reclaimed wastewaters.

14. "Reuse site" means that area where reclaimed wastewater is applied to and/or impounded upon.

15. "Secondary treatment" is a treatment process that produces treated wastewater containing no more than 30 milligrams per liter of five-day biochemical oxygen demand, 30 milligrams per liter of suspended solids, a pH between the limits of 6.0 to 9.0, and a fecal coliform standard based on the uses of the wastewater. Aerobic stabilization ponds shall be considered as providing secondary treatment if the effluent contains no more than 30 milligrams per liter of five-day biochemical oxygen demand, 90 milligrams per liter of suspended solids for pond systems treating less than or equal to two million gallons per day, plus the same pH and fecal coliform standards given above. Pond systems with a design capacity of greater than two million gallons per day must meet the 30 milligram per liter standard for suspended solids.

16. "Wastewater" means sanitary wastes of human origin, sewage, gray water, and industrial wastes that contain sanitary wastes or are used in the production or processing of any crop or substance which may be used as human or animal food.

17. "Wastewater reclamation system" means the wastewater treatment plant and the entire reuse and distribution system for the reclaimed wastewater.

18. "Wastewater treatment plant" encompasses all of the processes, devices, structures, and earth-works which are used for treating wastewater for disposal and reuse, but does not include septic tanks, wastewater treatment plants serving single family residences, industrial unit processes, or industrial impoundments for process waters within the industrial property.

#### Historical Note

Former Section R9-20-401 repealed, new Section R9-20-401 adopted eff. May 24, 1985 (Supp. 85-3).

#### R9-20-402. General requirements for reuse of wastewater

A. The application of reclaimed wastewater shall be consistent with the goals and policies of the Council.

B. Irrigation with untreated wastewater is prohibited.



C. No wastewater treatment plant owner shall release reclaimed wastewater for reuse without a permit issued by the Department.

D. Food crops which may be consumed raw by humans that are irrigated with reclaimed wastewater shall be considered adulterated foods in accordance with A.R.S. § 36-904 A.5, unless the reclaimed wastewater conforms with the limits and conditions of R9-20-403. The production, sale or delivery of such adulterated food crops is prohibited and the Director may detain, remove, or destroy such adulterated food crops pursuant to A.R.S. § 36-910.

E. A reuser may accept reclaimed wastewater and provide additional treatment for a more restrictive reuse. Under such conditions, the plant providing the additional treatment is subject to the same requirements as other wastewater treatment plants and will be permitted separately.

F. When no means of reuse, discharge, or disposal of reclaimed wastewater are available other than surface irrigation, a minimum of five days storage shall be provided to prevent the necessity of irrigation when the soil is saturated or during a period when the reclaimed wastewater does not meet the minimum water quality standards for the specific reuse. The irrigation site shall be designed to contain the runoff from a 10-year, 24-hour precipitation event unless the reclaimed wastewater meets the standards and conditions of a valid NPDES permit for discharge into waters of the United States. These provisions shall not apply to agricultural irrigation return flows, and runoff from highway landscaping or golf courses when the Department determines that such a flow does not present a danger to the health of the public.

G. Discharges of effluent into waters of the United States require a NPDES permit and are not regulated by this Article.

H. In determining allowable uses of reclaimed wastewater, the Department will consider the effects of blending secondary effluent with waters of higher quality or the effects of additional treatment prior to reuse if requested by the applicant. In cases where blending or additional treatment of secondary effluent is provided, the user shall submit to the Department, as a minimum, a plan of operation, a description of any additional treatment process, blending volumes, and an estimation of final quality at the point of reuse.

I. The wastewater treatment plant owner or the reclaimed wastewater owner shall be responsible and liable for meeting the conditions of the wastewater reuse permit. The treatment plant owner will not be liable for misapplication of reclaimed wastewater by reusers. To identify the responsibilities of the wastewater treatment plant owner and the reclaimed wastewater owner there shall be a legally enforceable contract which sets forth as a minimum:

1. The quality and maximum quantity of wastewater to be released for reuse by the wastewater treatment plant.
2. The specific reuse(s) for which the reclaimed wastewater will be used by the reuser.
3. The method of disposal of any reclaimed wastewater left over from the reuse activity by the reuser.

4. The responsibility for compliance with additional requirements for specific reuses as contained in R9-20-403 C, by the reuser.

J. In those cases where the reclaimed wastewater is owned by someone other than the wastewater treatment plant owner, the reclaimed wastewater owner may apply for the reuse permit pursuant to R9-20-405 A, and perform any of the other functions required by this Article so long as the reclaimed wastewater owner, in a form acceptable to the Director, commits to perform any or all of the duties required in this Article and/or produces a legally enforceable contract with the wastewater treatment plant owner which commits performance to any or all of the duties required in this Article. The intent of this policy is that the wastewater treatment plant owner and the reclaimed wastewater owner, either together or separately, agree to commit to all of the requirements of this Article, as shown in a legally enforceable contract.

K. In cases where someone other than the wastewater treatment plant owner makes an actual reuse of the reclaimed wastewater, each succession of ownership shall be governed by a legally enforceable contract, filed with the Department, which notifies the succeeding reclaimed wastewater owner of the requirements of this Article and which requires the succeeding owner to so contract with any additional succeeding reclaimed wastewater owners.

L. Nothing in this Article is intended to exempt disposal of reclaimed wastewater from the requirements of A.C.R.R. Title 9, Chapter 20, Article 2.

M. The use of reclaimed wastewater for direct human consumption is prohibited.

#### Historical Note

Former Section R9-20-402 repealed, new Section R9-20-402 adopted eff. May 24, 1985 (Supp. 85-3).

#### R9-20-403. Specific standards and permit monitoring requirements for the reuse of wastewater

A. Numerical parameter limits pertaining to specific reuse categories are contained in Table I of this Article and A.C.R.R. Title 9, Chapter 21, Article 2. Concentrations of trace substances, organic chemicals, toxic substances, and radiochemicals in waters used for agricultural irrigation, livestock watering, and recreation must meet the allowable limits contained in the State surface water quality standards, A.C.R.R. Title 9, Chapter 21, Article 2. Permit monitoring requirements for specific reuses are given in Table II of this Article. The regulations in this part apply to effluent flow at a point in the wastewater reclamation system just prior to release for reuse.

B. Permittees are not required to monitor routinely for enteric viruses, *entamoeba histolytica*, *giardia lamblia*, *ascaris lumbricoides*, common large tapeworm, trace substances, organic chemicals, toxic substances, or radiochemicals for which no sampling frequency is specified. However, should the Department find or have reason to believe such contaminants are present in excess of the allowable limits given in Table I of this Article and A.C.R.R. Title 9, Chapter 21, Article 2, corrective action including monitoring will be required to eliminate or reduce the contaminants to meet these limits.

TABLE 1—ALLOWABLE PERMIT LIMITS FOR SPECIFIC REUSES

PARAMETER	A	B	C	D	E	F	G	H	I	J
	ORCHARDS	FIELD SEED STORAGE	PASTURES	LIVESTOCK WATERING	PROCESSED FOOD	RESTRICTED ACCESS	LANDSCAPE AREAS	OPEN ACCESS	INDUSTRIAL HUMAN CONTACT	TOTAL BODY CONTACT
pH	4.5-9	4.5-9	4.5-9	6.5-9	4.5-9	4.5-9	4.5-9	4.5-9	6.5-9	6.5-9
FECAL COLIFORM (CFU/100 ml) <sup>a</sup>										
geometric mean (5 sample minimum)	1000	1000	1000	1000	1000	200	25	2-2	1000	200
single sample not to exceed	4000	4000	4000	4000	2500	1000	75	25	4000	800
TURBIDITY (NTU) <sup>b</sup>	—	—	—	—	—	—	5	1	5	1
ENTERIC VIRUS <sup>c</sup>	—	—	—	—	—	—	125 per 40 liters	1 per 40 liters	125 per 40 liters	1 per 40 liters
ENTAMOEBA HISTOLYTICA	—	—	—	—	—	—	—	none	detectable	none
GIARDIA	—	—	—	—	—	—	—	detectable	detectable	detectable
LAMBIA	—	—	—	—	—	—	—	none	none	none
ASCARIS	—	—	—	—	—	—	—	detectable	detectable	detectable
LUMBRICOIDES	—	—	—	—	—	—	—	none	none	none
COMMON LARVAE	—	—	—	—	—	—	—	detectable	detectable	detectable
TAPEWORM	—	—	—	—	—	—	—	—	—	—

Notes: a. CFU = colony forming units

b. NTU = nephelometric turbidity units

c. expressed as PFU, plaque forming units, MPN, most probable numbers, or immunofluorescent foci per liter

d. "None detectable" means no pathogenic microorganisms observed during examination

TABLE II — MINIMUM PERMIT MONITORING REQUIREMENTS FOR SPECIFIC REUSES

PARAMETER	Frequency									
	A	B	C	D	E	F	G	H	I	J
ORCHARDS										
FIBER, SEED & FORAGE	1/month	1/month	1/month	1/month	1/month	1/month	1/month	1/month	1/month	1/month
PASTURES	1/month	1/month	1/month	1/month	1/month	1/month	1/month	1/month	1/month	1/month
LIVESTOCK	1/month	1/month	1/month	1/month	1/month	1/month	1/month	1/month	1/month	1/month
WATERING	1/month	1/month	1/month	1/month	1/month	1/month	1/month	1/month	1/month	1/month
PROCESSED	1/month	1/month	1/month	1/month	1/month	1/month	1/month	1/month	1/month	1/month
LANDSCAPED AREAS	1/month	1/month	1/month	1/month	1/month	1/month	1/month	1/month	1/month	1/month
RESTRICTED ACCESS	1/month	1/month	1/month	1/month	1/month	1/month	1/month	1/month	1/month	1/month
OPEN ACCESS	1/month	1/month	1/month	1/month	1/month	1/month	1/month	1/month	1/month	1/month
RAW	1/month	1/month	1/month	1/month	1/month	1/month	1/month	1/month	1/month	1/month
FOOD CONSUMED	1/month	1/month	1/month	1/month	1/month	1/month	1/month	1/month	1/month	1/month
INCIDENTAL HUMAN CONTACT	1/month	1/month	1/month	1/month	1/month	1/month	1/month	1/month	1/month	1/month
PHI BODY CONTACT	1/month	1/month	1/month	1/month	1/month	1/month	1/month	1/month	1/month	1/month
pH	1/month	1/month	1/month	1/month	1/month	1/month	1/month	1/month	1/month	1/month
FECAL COLIFORM	1/month	1/month	1/month	1/month	1/month	1/month	1/month	1/month	1/month	1/month
TURBIDITY	1/month	1/month	1/month	1/month	1/month	1/month	1/month	1/month	1/month	1/month

C. Additional requirements for specific uses.

1. Irrigation of orchard crops and crops not subject to rotation (Table I, Column A). Irrigation shall be by a method which minimizes contact of the reclaimed wastewater with the fruit or foliage.

2. Irrigation of pastures (Table I, Column C). Pastures must be maintained to prevent incidental ponding or standing water except where local farming conditions and the use of accepted irrigation delivery systems and cropping patterns are such that, as an unavoidable consequence of such conditions, systems, and patterns, there will be standing water.

3. Irrigation of landscaped areas, cemeteries, highway medians, golf courses, and other areas where public access is restricted (Table I, Column F). Golf courses in residential areas which are separated by a fence or barrier of at least four feet in height will be included in this category. Golf courses contiguous with a residential area primarily restricted to adults or which strictly enforce non-access for anyone other than players will be included in this category.

a. Spray irrigation of fairways shall be limited to such times of the day as to reasonably preclude direct contact of the spray with golfers.

b. Irrigation spray shall not reach any privately-owned premises or public drinking fountains.

c. Hose bibbs discharging reclaimed wastewater shall be posted with signs reading "Reclaimed Water, Do Not Drink", or similar warnings, or be secured to prevent access by the public.

d. Signs reading "Irrigation with reclaimed wastewater" or similar warning shall be prominently displayed on the premises. Score cards shall include the same warning.

e. Irrigation pipe shall be color coded, buried with colored tape, or otherwise suitably marked to indicate non-potable water.

4. Irrigation of landscaped areas including playgrounds, lawns, parks, golf courses not covered by Paragraph 3. above, and other areas where public access is not restricted (Table I, Column G).

a. Hose bibbs discharging reclaimed wastewater shall be secured to prevent any use by the public.

b. Irrigation pipe shall be color coded, buried with colored tape, or otherwise suitably marked to indicate non-potable water.

c. These areas shall be irrigated only at such time as to minimize contact with the public and be reasonably dry and free from standing water during normal usage periods.

d. Signs reading "Irrigated with reclaimed wastewater" or similar warnings shall be prominently displayed on the premises.

5. On-site wastewater treatment plants.

a. For surface irrigation, on-site wastewater treatment plant effluent must meet the allowable limits listed in Table III of this Article. Surface irrigation sites shall be

designed to contain a 10-year, 24-hour rainfall event. On-site wastewater treatment plants which use reclaimed wastewater within common areas or discharge to areas off the reuse site are subject to quality, monitoring, management, and operation requirements which pertain to all other wastewater treatment plants.

b. This Section does not apply to on-site wastewater treatment plants that dispose effluent through the following means:

- i. Conventional leach trenches designed in accordance with Department engineering bulletins.
- ii. Mound disposal systems.
- iii. Evapotranspiration beds designed in accordance with Department engineering bulletins.

6. Gray water from single and multi-family residences may be used for surface irrigation under the following conditions:

a. The design and construction of the system are approved by the Department in accordance with A.C.R.R. Title 9, Chapter 8, Article 3. Design guidelines and information on suitable plantings and irrigation methods are available from the Department.

b. Such irrigation sites shall be designed to contain a 10-year, 24-hour rainfall event.

c. The gray water must meet the allowable limits for surface irrigation in Table III.

TABLE III  
ALLOWABLE LIMITS AND MONITORING REQUIREMENTS  
FOR SURFACE IRRIGATION WITH ON-SITE WASTEWATER TREATMENT  
PLANT EFFLUENT AND GRAY WATER

Parameters	Allowable Limits	Samples Required
Fecal Coliform (CFU/100 ml)		
geometric mean	25	Series of 5 in one calendar month; 1 series per year minimum
single sample not to exceed	75	
Chlorine Residual, mg/l	2.0	1/month minimum

7. Wetlands marsh.

a. Formation of a wetlands marsh is an allowable reuse of reclaimed wastewater under conditions and design criteria outlined in Engineering Bulletin No. 11, available from the Department.

b. Table IV of this Article contains minimum effluent standards and monitoring requirements for formation of a wetlands marsh or addition of reclaimed wastewater to an existing man-made wetlands marsh.

TABLE IV  
ALLOWABLE LIMITS AND MONITORING REQUIREMENTS  
FOR RECLAIMED WASTEWATER RELEASED  
TO WETLANDS MARSHES

Parameter	Allowable Limits	Samples Required
FECAL COLIFORM (CFU/100 ml, 30-day period)		
FLOWS LESS THAN 1 MILLION GALLONS PER DAY		
geometric mean	1000	5/month
single sample not to exceed	4000	
FLOWS 1 MILLION GALLONS PER DAY OR ABOVE		
geometric mean	1000	10/month
single sample not to exceed	4000	
pH, units	6.5-8.6	1/week
pH CHANGE, units/day, maximum change per day in receiving waters	0.5	
DISSOLVED OXYGEN, receiving waters shall not be lowered beyond this limit (mg/l)	6	2/week
TEMPERATURE	shall not interfere with aquatic life and wildlife	2/week
TRACE SUBSTANCES	per A.C.R.R. Title 9, Chapter 21, Article 2 "aquatic and wildlife"	

8. Industrial reuse.

a. All wastewater reclamation systems that contain industrial wastewater will be subject to these Regulations, if they either:

i. totally or partially consist of or originated as a sanitary waste of human origin; or,

ii. are used for the production and processing of any crops or substance which may be used as human or animal food.

b. Reuse of reclaimed wastewater for industrial purposes is exempt from these Regulations under the following circumstances:

i. The industrial wastewater did not originally contain sanitary wastes of human origin; or,

ii. the wastewater is not used for the production or processing of any crop or substance which may be used as human or animal food.

b. If not exempt, each industrial reuse will be considered on an individual basis to determine applicable quality criteria. The variety of industrial reuses is so extensive that establishing specific criteria governing all industrial reuses is not practicable. In

fixing such treatment requirements and quality criteria the Department shall give consideration to:

- i. The degree of potential contact with the reclaimed wastewater by the general public.
- ii. The degree of potential contamination of the products or byproducts being produced or handled in the industrial process.
- c. The use of secondary treated reclaimed wastewater for use in industrial cooling processes shall be allowed.

**Historical Note**

Former Section R9-20-403 repealed, new Section R9-20-403 adopted eff. May 24, 1985 (Supp. 85-3).

**R9-20-404. Irrigation as part of the wastewater treatment process**

Irrigation with partially treated wastewater is considered a part of the treatment process and is subject to the same Department controls as other wastewater treatment processes. Such irrigation is allowable only under all of the following conditions:

1. The person having administrative control over the wastewater treatment plant or the reclaimed wastewater owner has direct physical and administrative control over the irrigation site and process.
2. The entire treatment process, including irrigation and harvesting, is under the direct supervision of a wastewater treatment plant operator certified by the Department under A.C.R.R. Title 9, Chapter 20, Article 5.
3. The irrigation site, cropping, application rates, irrigation practices, harvesting, and a plan of operation shall have been approved by the Department.
4. Land to which partially treated wastewater is applied shall not be used for crops requiring higher quality irrigation water until such land use is approved in writing by the Department.
5. Any discharge of partially treated wastewater from the irrigation site shall be from a designated discharge point or points and shall meet the limits and conditions of NPDES permit or a groundwater permit issued under A.C.R.R. Title 9, Chapter 20, Article 2.

**Historical Note**

Former Section R9-20-404 repealed, new Section R9-20-404 adopted eff. May 24, 1985 (Supp. 85-3).

(The next page is 3.)



**R9-20-405. Permit for reuse of reclaimed wastewater**

- A. To effectuate R9-20-402.C., above, the following shall apply:
  1. Application for a permit and signatories.
    - a. The owner or operator of any wastewater treatment plant or reclaimed wastewater owner who proposes to allow the reclaimed wastewater to be reused for any of the purposes authorized by these Regulations shall complete, sign and submit to the Director information requested in an application form provided by the Department.
    - b. All permit applications shall be signed by either a principal executive officer or ranking elected official.
  2. Time allowed for application submittal. A person proposing a reuse facility shall submit an application not less than 120 days before the date on which the reuse is to commence, unless permission for a lesser period has been granted by the Director.
  3. Reissuance of permit: time allowed for application submittal. A person who expects to continue to release reclaimed wastewater for reuse after expiration of the permit shall apply for reissuance not less than 120 days before the expiration date of the present permit.
    4. Duration of permits and continuation of expiring permits.
      - a. All permits shall be issued for fixed terms not to exceed five years. Permits may be modified, transferred, reissued, or revoked by the Director.
      - b. The term and conditions of an expired permit are automatically continued under the provisions of A.R.S. § 41-1012.B pending issuance of a new permit if:
        - i. The permitted activity is of a continuing nature.
        - ii. The permittee has submitted a timely and sufficient application for a new permit.
        - iii. The Department is unable, through no fault of the permittee, to issue a new permit before the expiration date of the previous permit.
    5. Public comment and hearings, public notice regarding permits and permit hearings.
      - a. Notices shall be circulated in a manner designed to inform interested persons of a hearing or determination dealing with permit denial or issuance. Notice of draft permit shall allow at least 30 days for public comments and notice of hearing shall be given 30 days before the hearing.
      - b. Notice of the formulation of any draft permit and notice of all hearings shall be given by the Department:
        - i. By mailing a copy to the applicant, to interested State and county agencies, and to any person on request.
        - ii. By any of the following methods:
          - (1) By publication of a notice in a daily or weekly newspaper within the area affected by the wastewater reuse activity or discharge; or,

(The next page is 3.1.)

(2) by posting a copy of the information required at the principal office of the municipality or political subdivision affected by the wastewater reuse activity or discharge, and by posting a copy at the United States Post Office serving those premises.

(3) In any other manner constituting legal notice under State law.

B. Public notices issued under this Section will contain the following information:

1. Name and address of the office processing the application or conducting the hearing.

2. Name and address of the applicant and the wastewater treatment plant owner (if different from the applicant) and a general description of the location of each existing or proposed reuse facility.

3. Name of person, and an address and telephone number where interested persons may obtain further information, including copies of the draft permit.

C. Transfer of permits. A permit may be transferred to another person by a permittee if:

1. The permittee notifies the Director of the proposed transfer.

2. A written agreement containing a specific date for transfer of permit responsibility and coverage between the current and new permittees (including acknowledgment that the existing permittee is liable for violations up to that date, and that the new permittee is liable for violations from that date on) is submitted to the Director.

3. The Director, within 30 days of receiving a transfer notice, does not notify the current permittee and the new permittee of the intent to modify, revoke and reissue, or terminate the permit and to require that a new application be filed rather than agreeing to the transfer of the permit.

D. Permit compliance. To assure compliance with permit terms and conditions, the permittee shall monitor:

1. The amount, concentration, or other measurement for each contaminant from Table II of this Article and A.C.R.R. Title 9, Chapter 21, Article 2 specified in the permit.

2. The volume of reclaimed wastewater released for reuse.

3. Other parameters specifically required in the permit.

4. The Director will specify the following monitoring requirements in the permit:

a. Requirements concerning proper installation, use and maintenance of monitoring equipment or methods (including biological monitoring methods where appropriate).

b. Monitoring frequency, type and intervals sufficient to yield continuing data representative of the volume of reclaimed wastewater flow and the quantity of contaminant discharged.

c. Test procedures for the analysis of contaminant meeting the requirements of this Section.

5. Test procedures identified in 40 CFR Part 136 shall be utilized for contaminants or parameters listed in the permit unless an alternative test procedure has been approved by the Director.

E. Recording of monitoring results.

1. Any permittee required to monitor shall maintain records of all monitoring information and monitoring activities, including:

- a. The date, exact place and time of sampling or measurements.
- b. The person(s) who performed the sampling or measurements.
- c. The date(s) analyses were performed.
- d. The person(s) who performed the analyses.
- e. The analytical techniques or methods used.
- f. The results of such analyses.

2. All records of monitoring activities and results (including all original strip chart recordings for continuous monitoring instrumentation and calibration and maintenance records) shall be retained by the permittee for three years. The three-year period shall be extended:

- a. Automatically during the course of any unresolved litigation regarding the discharge of contaminants by the permittee.
- b. As requested in writing by the Director.

F. Access to records. The manager of the wastewater treatment plant shall allow any and all of the reusers to have access to the records of physical, chemical and biological quality of the reclaimed wastewater.

G. Availability of records. Water quality records of the wastewater facility will be available for public inspection at the Department.

H. Reuses requiring lower quality reclaimed wastewater than that allowed by permit. It is expressly allowed that a reuser of reclaimed wastewater may use the water for any purpose included in these Regulations which requires a lower quality than that set forth in the permit.

Historical Note

Former Section R9-20-405 repealed, new Section R9-20-405 adopted eff. May 24, 1985 (Supp. 85-3).

**R9-20-406. Enforcement and penalties**

Any person who releases reclaimed wastewater for reuse without a permit or contrary to provisions of a permit or this Article, falsifies data or information submitted to the Department as a result of the requirements of this Article, or otherwise violates the provisions of this Article, shall be subject to enforcement and penalties pursuant to A.R.S. §§ 36-1864, 36-1864.01, 36-1864.02 and any other applicable and appropriate provisions of the Arizona Revised Statutes.

Historical Note

Former Section R9-20-406 repealed, new Section R9-20-406 adopted eff. May 24, 1985 (Supp. 85-3).

(The next page is 4.)

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EXHIBIT "C"

11

POINT OF DELIVERY TO RID

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(To Be Provided Subsequent To Engineering Studies)

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**EXHIBIT "C"**

**Point of Delivery to RID**

**NOT AVAILABLE AS OF THE EXECUTION OF THIS AGREEMENT**

## EXHIBIT "D"

RID - SRP  
WATER DELIVERY SCHEDULE

Section 1. Pursuant to Paragraph 11 and Exhibit 3.k. of the SRPMIC Agreement, RID water delivered to SRP shall be in accordance with SRP's request as defined in Section 2, except for interruptions or reductions:

(a) due to RID's inability to satisfy SRP's request and still fully satisfy RID's and RID's customers' then-existing water delivery needs;

(b) due to uncontrollable forces; and

(c) which, in the opinion of RID, are necessary or desirable for the purposes of maintenance, repairs, replacement, installations, investigations and inspections of RID's equipment and facilities; provided that RID, except in the case of emergency, as determined by RID, will give SRP reasonable advance notice of temporary interruptions or reductions and will attempt to remove the cause thereof with diligence. In no event shall any liability accrue against RID, its officers, agents, employees and customers by reason of any such interruptions or reductions in the delivery of RID water hereunder, nor shall SRP, its shareholders and customers be entitled to any compensation or reimbursement for any such interruptions or reductions.

Section 2. RID water deliveries hereunder to SRP shall be made at SRP's request, provided that requests for delivery, or changes in amount of delivery, shall be made by SRP twenty-four

1 (24) hours in advance of the delivery date and prior to three  
2 o'clock p.m. on the day such request is made. Unless otherwise  
3 mutually agreed in writing, SRP's requests for delivery shall be  
4 made by SRP's authorized representative to the authorized repre-  
5 sentative of RID's Administrative Offices in Buckeye, Arizona, and  
6 may be verbal or in writing, provided verbal requests are con-  
7 firmed monthly in writing mailed to the Superintendent of RID at  
8 RID's Administrative Offices, P.O. Box 94, Buckeye, Arizona  
9 85326. SRP's requests, both written and verbal, shall specify the  
10 location of delivery, the rate of flow and the duration of run.  
11 The amount delivered, at the times and locations requested, shall  
12 not impede RID's ability to fully satisfy RID's and RID's  
13 customers' then existing water delivery needs.

14 Section 3. The dates and amounts of RID's deliveries to SRP  
15 shall be confirmed monthly in writing mailed to: Salt River  
16 Project, Hydrology Division, P.O. Box 52025, Phoenix, Arizona  
17 85072-2025.

**SRPMIC**

**Exhibit 3.1 – Plan 6 Approval – City of Tucson**



ADOPTED BY THE  
MAYOR AND COUNCIL

AUG 07 1989

RESOLUTION NO. 15014

RELATING TO WATER; AUTHORIZING THE MAYOR TO EXECUTE A LETTER OF AGREEMENT ALLOWING THE USE OF DESIGNATED STORAGE SPACE IN ROOSEVELT DAM TO ASSIST IN THE RESOLUTION OF WATER RIGHTS LITIGATION INVOLVING THE SALT RIVER PIMA-MARICOPA INDIAN COMMUNITY.

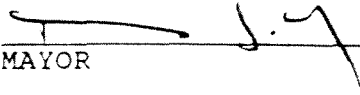
BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF TUCSON, ARIZONA, AS FOLLOWS:

SECTION 1. The Mayor is hereby authorized and directed to execute for and on behalf of the City of Tucson the letter authorizing use of designated water storage space in Roosevelt Dam to facilitate the settlement of water rights litigation involving the Salt River Pima-Maricopa Indian Community, which letter is attached hereto as Exhibit A, and the City Clerk is directed to attest the same.


SECTION 2. The various City officers and employees are authorized and directed to perform all acts necessary or desirable to give effect to this resolution.

SECTION 3. WHEREAS, it is necessary for the preservation of the peace, health and safety of the City of Tucson that this resolution become immediately effective, an emergency is hereby declared to exist and this resolution shall be effective immediately upon its passage and adoption.

PASSED, ADOPTED AND APPROVED by the Mayor and Council  
of the City of Tucson, Arizona, AUG 07 1989.

  
\_\_\_\_\_  
MAYOR


ATTEST:

  
\_\_\_\_\_  
CITY CLERK

APPROVED AS TO FORM:

  
\_\_\_\_\_  
CITY ATTORNEY

REVIEWED BY:

  
\_\_\_\_\_  
CITY MANAGER

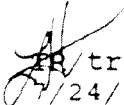
  
TR/tr  
7/24/89

EXHIBIT A TO RESOLUTION NO. 15014

July 17, 1989

The Honorable Thomas Volgy  
Mayor  
CITY OF TUCSON  
Post Office Box 27210  
Tucson, Arizona 85726-7210

Re: SRPMIC Settlement Agreement  
Modification of the Plan 6 Agreement

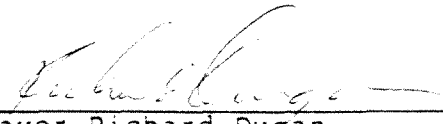
Dear Mayor Volgy:

In order to assist in the resolution of outstanding water litigation relating to the Salt River Pima-Maricopa Indian Community ("SRPMIC"), the Cities of Chandler, Glendale, Mesa, Phoenix, Scottsdale, and Tempe have agreed to permit SRPMIC to jointly use Plan 6 storage space in modified Roosevelt Dam for storage of the SRPMIC Kent-Decree entitlement. Paragraphs 7.0 and 7.6 of the SRPMIC Settlement Agreement, attached for your convenience, provide that "designated space" of the additional active conservation capacity in Roosevelt Dam shall be used "to accomplish other Plan 6 purposes when not needed to re-regulate SRPMIC's Kent-Decree entitlement." Subject to Paragraph 7.2 of the SRPMIC Agreement, the United States will forgive a portion of the non-federal funding associated with this designated space. Paragraph 7.2 is also attached for your review.

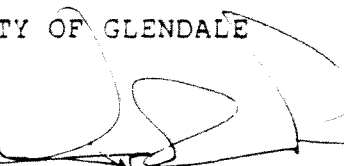
In the negotiations of this settlement contract, a question arose of whether storing tribal water in Plan 6 facilities was tantamount to an amendment to the Plan 6 up-front funding contract. Fortunately, nearly all of the signatories to the Plan 6 Agreement are parties to the SRPMIC Settlement Agreement and have, pursuant to the settlement agreement, agreed to such use of the Additional Active Conservation capacity and to the adjustment of the funding obligation. However, the City of Tucson and the Maricopa County Flood Control District are not parties to the settlement agreement. Consequently, we are requesting your approval and the Maricopa County Flood Control District's approval of this arrangement.

A line has been included below for your signature. If the City of Tucson is in agreement that the conservation space may be utilized, in part, for the storage of tribal water supplies, that the funding obligation may be adjusted and is willing to waive any objections to such use, please indicate your approval by signing and returning the original of this letter.

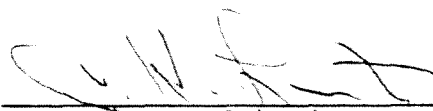
CITY OF CHANDLER

By   
Mayor Richard Dugan

CITY OF GLENDALE

By   
Mayor George R. Renner


CITY OF MESA

By   
~~Mayor Peggy Rubach~~ C. K. Luster,  
City Manager

CITY OF PHOENIX

By   
Mayor Terry Goddard

CITY OF SCOTTSDALE

By   
Mayor Herbert R. Brinkwater

CITY OF TEMPE

By Harry E. Mitchell  
Mayor Harry E. Mitchell

ACCEPTED AND APPROVED:

CITY OF TUCSON

By Thomas Volgy  
Mayor Thomas Volgy

ATTEST:

Smallwood  
City Clerk

APPROVED AS TO FORM:

for [Signature]  
City Attorney

enclosures

**ADDENDUM**  
to  
**Exhibit "3.1"**



113 West 113rd Street • Phoenix, Arizona 85001  
Telephone (602) 242-1741

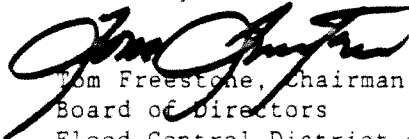
R. C. & A.

During negotiations of this settlement contract, a question arose as to whether storing tribal water in Plan 6 facilities was tantamount to an amendment to the Plan 6 up-front funding contract. Unlike nearly all of the signatories to the Plan 6 Agreement, the Flood Control District of Maricopa County is not a party to the SRPMIC Settlement Agreement, and has not, pursuant to the settlement agreement, agreed to such use of the Additional Active Conservation capacity and to the adjustment of the funding obligation.

Page 2  
Plan 6 Participants  
Michael J. Brophy, Esquire  
October 16, 1989

The Board of Directors of the Flood Control District of Maricopa County concurred by the enclosed agenda item, which was approved on October 2, 1989 that per the terms of the SRPMIC Settlement Agreement, the conservation space may be utilized, in part, for the storage of tribal water supplies, and that the funding obligation may be adjusted and waives any objections to such use.

Sincerely,



Tom Freestone, Chairman  
Board of Directors  
Flood Control District of Maricopa County

Enclosure

Copy w/ enclosure to:

Mayor Richard Dugan, City of Chandler  
Mayor George R. Renner, City of Glendale  
Mayor Peggy Rubach, City of Mesa  
Mayor Terry Goddard, City of Phoenix  
Mayor Herbert R. Drinkwater, City of Scottsdale  
Mayor Harry E. Mitchell, City of Tempe





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EXHIBIT "3.m.1"

City of Chandler - SRPMIC Project Water Lease Agreement

## PROJECT WATER LEASE AGREEMENT

1. PREAMBLE

This Project Water Lease Agreement, made as of the 12th day of February, 1988, is between the United States of America (hereinafter "United States"), the Salt River Pima-Maricopa Indian Community (hereinafter "Lessor") and the City of Chandler, Arizona (hereinafter "Lessee"), witnesseth that:

2. EXPLANATORY RECITALS

WHEREAS, the parties to this Project Water Lease Agreement are also parties to the Salt River Pima-Maricopa Indian Community Water Settlement Agreement dated as of February 12, 1988 (the "SRPMIC Agreement");

WHEREAS, Paragraph 19.0 of the SRPMIC Agreement obligates the United States, the Lessor and the Lessee to enter into an agreement for the lease by the Lessor to the Lessee of Project Water to which the Lessor is entitled under the Central Arizona Project Indian Delivery Contract dated December 11, 1980 (the "CAP Delivery Contract"); and

WHEREAS, by the Act of October 20, 1988, 102 Stat. 2549 (the "Authorizing Legislation"), the United States confirmed the SRPMIC Agreement and specifically authorized the amendment of the CAP Delivery Contract and the lease of the Lessor's rights to Project Water to the Lessee; and

WHEREAS, pursuant to the SRPMIC Agreement and the Authorizing Legislation, the United States and the Lessor have executed a First

. . .

1 Amendment to the CAP Delivery Contract which authorizes the Lessor  
2 to make this Project Water Lease Agreement;

3 NOW, THEREFORE, in consideration of the mutual covenants con-  
4 tained in this and other pertinent agreements, it is agreed as  
5 follows:

6 3. LEASE OF PROJECT WATER

7 3.1 Subject of Lease. The Lessor leases to the Lessee the  
8 right to the delivery of 2,586 acre-feet per year of Project Water  
9 under the CAP Delivery Contract, subject to the terms and condi-  
10 tions of the CAP Delivery Contract except as modified herein.

11 3.2 Term of Lease. The term of this Project Water Lease  
12 Agreement shall commence on January 1, 2000, and end on  
13 December 30, 2098.

14 3.3 Lessee's Payment for Lease. The consideration for this  
15 Project Water Lease Agreement is the payment by the Lessee to the  
16 Lessor of the sum of \$3,112,000, which amount is due and payable on  
17 the effective date of this Project Water Lease Agreement. In lieu  
18 of making payment in full upon the effective date of this Project  
19 Water Lease Agreement, the Lessee may elect to make payment in  
20 either of the following ways:

- 21 A. An initial down payment of \$1,556,000 on the effective  
22 date of this Project Water Lease Agreement, with four (4)  
23 annual payments, payable on the next four (4) anniversary  
24 dates of the effective date of this Project Water Lease  
25 Agreement, of \$389,000 each, together with interest on  
26 the unpaid balance at an annual rate determined as fol-

1            lows: one percent (1%) over the net interest rate paid  
2            by the City of Phoenix on its Water Renewal Refunding  
3            Bonds, Series 1986, determined as of the effective date  
4            of this Project Water Lease Agreement. Interest accrued  
5            shall not be added to principal and shall not itself bear  
6            interest unless delinquent.

7            B. An initial payment of \$389,000 on the effective date of  
8            this Project Water Lease Agreement, with seven (7) annual  
9            payments payable on the next seven (7) anniversary dates  
10           of the effective date of this Project Water Lease Agree-  
11           ment of \$389,000 each, together with interest on the  
12           unpaid balance at an annual rate of one percent (1%) over  
13           the Valley National Bank Home Office prime rate deter-  
14           mined as of the effective date of this Project Water  
15           Lease Agreement.

16           Interest under this subparagraph B shall be calcu-  
17           lated as follows: If, for example, the Lessee elects to  
18           pay under this subparagraph B, and the Valley National  
19           Bank Home Office prime rate as of the effective date of  
20           this Lease is seven percent (7%), the second annual  
21           installment shall be in the principal amount of \$389,000  
22           plus interest in the amount of \$217,840, for a total  
23           payment of \$606,840. The third annual installment shall  
24           be in the principal amount of \$389,000 plus interest in  
25           the amount of \$186,720, for a total payment of  
26           \$575,720.

1 Without any prepayment penalty, the Lessee may at any time elect to  
2 pay the balance in full together with interest on the unpaid  
3 balance to the date of such payment.

4 3.4 Operation, Maintenance and Replacement Costs. The Lessee  
5 shall pay the full amount of the water service charges for opera-  
6 tion, maintenance and replacement costs for the Project Water to  
7 the United States or, if so directed by the Secretary, to the Cen-  
8 tral Arizona Water Conservation District ("CAWCD") in accordance  
9 with Article 5.1 of the Lessee's CAP M&I Water Service Subcontract,  
10 except that the Lessee's obligation to pay operation, maintenance  
11 and replacement charges shall not begin earlier than October 1,  
12 1998.

13 3.5 Other Charges or Payments. The Lessee shall not be obli-  
14 gated to pay water service capital charges or M&I subcontract  
15 charges or any other charges or payments for the Project Water  
16 other than as provided in Subparagraphs 3.3, 3.4, 3.5 and 3.12 of  
17 this Project Water Lease Agreement. The Lessee shall pay any  
18 charges or payments imposed against the Lessor with respect to the  
19 leased Project Water during the term of this Project Water Lease  
20 Agreement.

21 3.6 Delivery of Water. The United States or CAWCD shall  
22 deliver the Lessor's Project Water to the Lessee as further  
23 provided herein; however, neither the United States nor CAWCD shall  
24 be obligated to make such deliveries if, in the judgment of CAWCD  
25 or the Secretary, delivery or schedule of deliveries to the Lessee  
26 would limit deliveries of CAP water to other CAP subcontractors to

1 a degree greater than deliveries to the Lessor. The United States  
2 or CAWCD shall deliver water to the Lessee in accordance with water  
3 delivery schedules provided by the Lessee to the United States and  
4 CAWCD. The water ordering procedures contained in Article 4.4 of  
5 the Lessee's CAP M&I Water Service Subcontract shall apply to the  
6 Lessee's ordering of water under this Project Water Lease Agree-  
7 ment. In no event shall the United States or CAWCD be required to  
8 deliver to the Lessee from the Water Supply System in any one month  
9 a total amount of Project Water greater than eleven percent (11%)  
10 of the Lessee's maximum entitlement under this Project Water Lease  
11 Agreement; provided, however, that the United States or CAWCD may  
12 deliver a greater percentage in any month if such increased  
13 delivery is compatible with the overall delivery of Project Water  
14 to all CAP subcontractors as determined by the United States and  
15 CAWCD if the Lessee agrees to accept such increased deliveries.

16 3.6.1 Sharing of Shortages. In the event of a shortage  
17 resulting in the Lessor's share of Project Water under the CAP  
18 Delivery Contract falling below 13,300 acre feet in any year, such  
19 shortage shall be shared pro rata among the Arizona Cities of  
20 Glendale, Phoenix, Chandler, Mesa, Scottsdale, and Tempe and the  
21 Arizona Town of Gilbert in accordance with the percentages set  
22 forth in Paragraph 19.6 of the SRPMIC Agreement.

23 3.7 Use of Project Water Outside Reservation. The Lessee may  
24 use or deliver Project Water for use outside the boundaries of the  
25 reservation, but may not use or deliver Project Water for use  
26 outside of the boundaries of CAWCD.

1           3.8 Conditions Relating to Delivery and Use. Lessee shall  
2 have the right to use water received under this Project Water Lease  
3 Agreement for any purpose consistent with Arizona law, including  
4 ground water recharge as that term is defined in Contract  
5 No. 14-06-W-245 between the United States and CAWCD dated  
6 December 15, 1972, as amended on December 1, 1988, hereinafter  
7 referred to as the "Repayment Contract." Deliveries of Project  
8 Water to the Lessee and its use by the Lessee shall be subject to  
9 the Conditions Relating to Delivery and Use in Article 4.3 of the  
10 Lessee's CAP M&I Water Service Subcontract. During the term of  
11 this Project Water Lease Agreement, the following subarticles or  
12 articles of the Lessee's CAP M&I Water Service Subcontract shall  
13 apply to the Lessee and to the Lessee's use of water under this  
14 Project Water Lease Agreement: Subarticles 4.5(c), 4.5(d), and  
15 5.2(f); Articles 4.9, 4.10, 5.3, 5.4, 5.5, 6.4, 6.6, 6.9, 6.10,  
16 6.11. and 6.13. Lessee expressly approves and agrees to all the  
17 terms presently set out in the Repayment Contract, or as such terms  
18 may be hereafter amended, and agrees to be bound by the actions to  
19 be taken and the determinations to be made under that Repayment  
20 Contract, except as otherwise provided herein.

21           3.9 Secretarial Control of Return Flow. Project Water used  
22 by the Lessee pursuant to the provisions of this Project Water  
23 Lease Agreement shall be subject to the terms relating to the Sec-  
24 retary's right to control return flow as provided in Article 4.8 of  
25 the Lessee's CAP M&I Water Service Subcontract.

26 . . .



1        3.10 Points of Delivery. The Project Water to be delivered to  
2 the Lessee pursuant to the provisions of this Project Water Lease  
3 Agreement shall be delivered at turnouts to be constructed by the  
4 United States at such points on the Water Supply System as have  
5 been previously agreed upon by the Contracting Officer and the  
6 Lessee in accordance with the provisions of Article 4.5 of the  
7 Lessee's CAP M&I Water Service Subcontract.

8        3.11 Lessor's Covenants. The Lessor agrees:

- 9        A. To observe and perform all obligations imposed on the  
10 Lessor under the CAP Delivery Contract which are not  
11 assumed by the Lessee so that the Lessee's rights and  
12 duties are not in any way impaired;
- 13        B. Not to execute any other lease of the Lessor's right to  
14 the delivery of Project Water under the CAP Delivery  
15 Contract which would impair the Lessee's rights and  
16 duties hereunder;
- 17        C. Not to alter or modify the terms of the CAP Delivery  
18 Contract, except as provided herein, in such a way as to  
19 impair the Lessee's rights hereunder or exercise any  
20 option required or permitted by the CAP Delivery Contract  
21 so as to interfere with or change the rights and obliga-  
22 tions of the Lessee hereunder; and

23        . . .

24        . . .

25        . . .

26        . . .

1 D. Not to terminate or cancel the CAP Delivery Contract or  
2 transfer, convey or permit a transfer or conveyance of  
3 the Contract so as to cause a termination of,  
4 interference with, or modification of the rights and  
5 obligations under the CAP Delivery Contract.

6 3.12 Lessee Assignment. The Lessee may not transfer, assign  
7 or sublease all or any part of its interest in Project Water out-  
8 side the boundaries of its existing or future service area without  
9 the prior written consent of the Lessor and the Secretary; provided  
10 that the Lessee shall not transfer, assign, or sublease all or any  
11 part of its interest in Project Water hereunder for an amount in  
12 excess of that which the Lessee is obligated to pay under this  
13 Project Water Lease Agreement without the additional prior written  
14 approval of CAWCD and the Secretary. If Project Water under this  
15 Project Water Lease Agreement is transferred, assigned or subleased  
16 by the Lessee for an amount in excess of that which the Lessee paid  
17 for such water under this Project Water Lease Agreement, the excess  
18 amount shall be paid forthwith by the Lessee to the CAWCD for  
19 application against CAWCD's repayment obligation to the United  
20 States; Provided, however, That the Lessee shall be entitled to  
21 recover actual costs of transportation, treatment, and distribu-  
22 tion, including but not limited to capital costs and OM&R costs.  
23 The Lessee shall not transfer, assign or sublease all or any part  
24 of its interest in Project Water if such transfer, assignment or  
25 sublease will adversely affect the Lessor without the prior written  
26 approval of Lessor. Lessee shall provide to CAWCD and the United

1 States copies of any agreement transferring, assigning or sub-  
2 leasing all or any portion of Lessee's entitlement under this  
3 Project Water Lease Agreement. Approval is hereby granted by the  
4 Secretary and the Lessor to the Lessee for the transfer, assignment  
5 or sublease of all or any part of its interest in Project Water  
6 under this Project Water Lease Agreement to the Arizona Cities of  
7 Phoenix, Glendale, Mesa, Scottsdale and Tempe, and the Arizona Town  
8 of Gilbert, or to its successor(s) in interest within the bound-  
9 aries of its existing or future service area. Such approval shall  
10 be effective only upon the agreement by such transferee, assignee,  
11 or sublessee to pay all applicable water service charges associated  
12 with the delivery of Project Water, and otherwise to abide by all  
13 terms and conditions of this Project Water Lease Agreement.

14 3.13 CAWCD Repayment. For the purpose of determining the  
15 allocation and repayment of costs of the CAP as provided in Article  
16 9.3 of Contract No. 14-06-W-245 between the United States and CAWCD  
17 dated December 15, 1972, and any amendment or revision thereof, the  
18 costs associated with the delivery of water pursuant to this Water  
19 Project Lease Agreement shall be nonreimbursable, and such costs  
20 shall be excluded from CAWCD's repayment obligation.

21 4. GENERAL PROVISIONS

22 4.1 United States Consent to Lease. The United States hereby  
23 approves and consents to this Project Water Lease Agreement.

24 4.2 Effective Date. This Project Water Lease Agreement shall  
25 become effective on the enforceability date of the SRPMIC Agreement  
26 as set forth in Paragraph 21.6 thereof.

1       4.3 Effect of SRPMIC Agreement. On the enforceability date  
2 of the SRPMIC Agreement, this Project Water Lease Agreement shall  
3 be effective and enforceable between the Lessor and the Lessee  
4 notwithstanding the performance or non-performance of other  
5 provisions of the SRPMIC Agreement not related to this Project  
6 Water Lease Agreement. The provisions of the SRPMIC Agreement that  
7 are related to this Project Water Lease Agreement are set forth in  
8 Paragraph 19.0 of the SRPMIC Agreement.

9       4.4 Invalidity of Agreement. If the Lessee's entitlement to  
10 Project Water under this Project Water Lease Agreement is deter-  
11 mined to be invalid by a final judgment entered over the objection  
12 of the Lessee with the result that the Lessor reacquires the right  
13 to receive the Project Water, then the Lessor shall refund to the  
14 Lessee that portion of the lease payment that the number of years  
15 remaining in the lease term at the time of such determination bears  
16 to the total lease term.

17       4.5 Curing for Lessee's Nonpayment. If the initial payment  
18 is not made on or before the date such payment is due, or if any  
19 successive lease payment is not made on the date such payment is  
20 due, the Lessee shall be in default and the Lessor shall give writ-  
21 ten notice of default to the defaulting Lessee. The Lessor shall  
22 also send a copy of the notice of default to each other party to  
23 the SRPMIC Agreement which has entered into a Project Water Lease  
24 Agreement for the lease of the Lessor's Project Water ("Other  
25 Cities"). Notice shall be given in the manner and to the city  
26 officers specified in Paragraph 21.17 of the SRPMIC Agreement. The

1 notice of default shall specifically describe the default and state  
2 the amount due by such Lessee ("Default Amount"). After notice of  
3 default, the rights of the Lessee, the Lessor and the Other Cities  
4 shall be as follows:

5       A. During the first thirty (30) days following the notice of  
6       default ("First Grace Period"), the defaulting Lessee  
7       shall have the exclusive right to cure any such default  
8       by tendering the Default Amount to the Lessor together  
9       with interest on the Default Amount accrued at the annual  
10      rate of ten percent (10%) calculated from the due date.  
11      During the First Grace Period, the defaulting Lessee may  
12      cure only by tendering the Default Amount.

13      B. In the event that the defaulting Lessee has not cured  
14      within thirty (30) days following the notice of default,  
15      the Lessee, any of the Other Cities, and/or any combina-  
16      tion thereof, may thereafter, but within sixty (60) days  
17      following the notice of default ("Second Grace Period"),  
18      cure the default by tendering the Default Amount to the  
19      Lessor together with interest on the Default Amount  
20      accrued at the annual rate of ten percent (10%) calcu-  
21      lated from the due date. Each curing city or town shall  
22      succeed to the interest of the defaulting Lessee to the  
23      extent of its contribution. A cure effected pursuant to  
24      this section shall constitute full performance of such  
25      payment obligation.

26 . . .

C. After notice of default and after failure to cure as provided for in Paragraphs 4.5.A. and B. hereof, the defaulting Lessee will be indebted to the Lessor in the amount of \$3,112,000 less principal payments made before the default together with interest, costs and reasonable attorneys' fees and the Lessor will be entitled to judgment for such an amount. Payment of the amount provided in this subparagraph shall constitute full performance of the Lessee's obligations under Paragraph 3.3 of this Project Water Lease Agreement.

IN WITNESS WHEREOF the parties have executed this Project Water Lease Agreement on the date written above.

THE UNITED STATES OF AMERICA

By Nathan D. Baker  
Bureau of Indian Affairs

By [Signature]  
Bureau of Reclamation

Attest:

THE SALT RIVER PIMA-MARICOPA  
INDIAN COMMUNITY

By [Signature]  
Name: GERALD ANTON  
Title: PRESIDENT

Attest:

CITY OF CHANDLER, an Arizona  
municipal corporation

City Clerk

Attest:

By \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

1 C. After notice of default and after failure to cure as  
2 provided for in Paragraphs 4.5.A. and B. hereof, the  
3 defaulting Lessee will be indebted to the Lessor in the  
4 amount of \$3,112,000 less principal payments made before  
5 the default together with interest, costs and reasonable  
6 attorneys' fees and the Lessor will be entitled to  
7 judgment for such an amount. Payment of the amount  
8 provided in this subparagraph shall constitute full  
9 performance of the Lessee's obligations under Paragraph  
10 3.3 of this Project Water Lease Agreement.

11 IN WITNESS WHEREOF the parties have executed this Project  
12 Water Lease Agreement on the date written above.

13 THE UNITED STATES OF AMERICA

14  
15 By Wilson Barber  
16 Bureau of Indian Affairs

17 By W. H. E. J.  
18 Bureau of Reclamation

19 Attest:

20 THE SALT RIVER PIMA-MARICOPA  
21 INDIAN COMMUNITY

22 By \_\_\_\_\_  
23 Name: \_\_\_\_\_  
24 Title: \_\_\_\_\_

25 Attest:

26 CITY OF CHANDLER, an Arizona  
municipal corporation

27 Carolyn Dunn  
28 City Clerk

29 Attest:

30 By Richard Dugan  
31 Name: RICHARD DUGAN  
32 Title: MAYOR

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EXHIBIT "3.m.2"

12

City of Glendale - SRPMIC Project Water Lease Agreement

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PROJECT WATER LEASE AGREEMENT

1. PREAMBLE

This Project Water Lease Agreement, made as of the 12th day of February, 1988, is between the United States of America (hereinafter "United States"), the Salt River Pima-Maricopa Indian Community (hereinafter "Lessor") and the City of Glendale, Arizona (hereinafter "Lessee"), witnesseth that:

2. EXPLANATORY RECITALS

WHEREAS, the parties to this Project Water Lease Agreement are also parties to the Salt River Pima-Maricopa Indian Community Water Settlement Agreement dated as of February 12, 1988 (the "SRPMIC Agreement");

WHEREAS, Paragraph 19.0 of the SRPMIC Agreement obligates the United States, the Lessor and the Lessee to enter into an agreement for the lease by the Lessor to the Lessee of Project Water to which the Lessor is entitled under the Central Arizona Project Indian Delivery Contract dated December 11, 1980 (the "CAP Delivery Contract"); and

WHEREAS, by the Act of October 20, 1988, 102 Stat. 2549 (the "Authorizing Legislation"), the United States confirmed the SRPMIC Agreement and specifically authorized the amendment of the CAP Delivery Contract and the lease of the Lessor's rights to Project Water to the Lessee; and

WHEREAS, pursuant to the SRPMIC Agreement and the Authorizing Legislation, the United States and the Lessor have executed . . .

1 a First Amendment to the CAP Delivery Contract which authorizes the  
2 Lessor to make this Project Water Lease Agreement;

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

6 3. LEASE OF PROJECT WATER

7 3.1 Subject of Lease. The Lessor leases to the Lessee  
8 the right to the delivery of 1,814 acre-feet per year of Project  
9 Water under the CAP Delivery Contract, subject to the terms and  
10 conditions of the CAP Delivery Contract except as modified herein.

11 3.2 Term of Lease. The term of this Project Water Lease  
12 Agreement shall commence on January 1, 2000, and end on  
13 December 30, 2098.

14 3.3 Lessee's Payment for Lease. The consideration for  
15 this Project Water Lease Agreement is the payment by the Lessee to  
16 the Lessor of the sum of \$2,182,400, which amount is due and pay-  
17 able on the effective date of this Project Water Lease Agreement.  
18 In lieu of making payment in full upon the effective date of this  
19 Project Water Lease Agreement, the Lessee may elect to make payment  
20 in either of the following ways:

21 A. An initial down payment of \$1,091,200 on the  
22 effective date of this Project Water Lease  
23 Agreement, with four (4) annual payments, pay-  
24 able on the next four (4) anniversary dates of  
25 the effective date of this Project Water Lease  
26 Agreement, of \$272,800 each, together with

1 interest on the unpaid balance at an annual  
2 rate determined as follows: one percent (1%)  
3 over the net interest rate paid by the City of  
4 Phoenix on its Water Renewal Refunding Bonds,  
5 Series 1986, determined as of the effective  
6 date of this Project Water Lease Agreement.  
7 Interest accrued shall not be added to princi-  
8 pal and shall not itself bear interest unless  
9 delinquent.

10 B. An initial payment of \$272,800 on the effective  
11 date of this Project Water Lease Agreement,  
12 with seven (7) annual payments payable on the  
13 next seven (7) anniversary dates of the effec-  
14 tive date of this Project Water Lease Agreement  
15 of \$272,800 each, together with interest on the  
16 unpaid balance at an annual rate of one percent  
17 (1%) over the Valley National Bank Home Office  
18 prime rate determined as of the effective date  
19 of this Project Water Lease Agreement.

20 Interest under this subparagraph B shall be calculated as  
21 follows: If, for example, the Lessee elects to pay under this  
22 subparagraph B, and the Valley National Bank Home Office prime rate  
23 as of the effective date of this Lease is seven percent (7%), the  
24 second annual installment shall be in the principal amount of  
25 \$272,800 plus interest in the amount of \$152,768, for a total  
26 payment of \$425,568. The third annual installment shall be in the

1 principal amount of \$272,800 plus interest in the amount of  
2 \$130,944, for a total payment of \$403,744.

3 Without any prepayment penalty, the Lessee may at any  
4 time elect to pay the balance in full together with interest on the  
5 unpaid balance to the date of such payment.

6 3.4 Operation, Maintenance and Replacement Costs. The  
7 Lessee shall pay the full amount of the water service charges for  
8 operation, maintenance and replacement costs for the Project Water  
9 to the United States or, if so directed by the Secretary, to the  
10 Central Arizona Water Conservation District ("CAWCD") in accordance  
11 with Article 5.1 of the Lessee's CAP M&I Water Service Subcontract,  
12 except that the Lessee's obligation to pay operation, maintenance  
13 and replacement charges shall not begin earlier than October 1,  
14 1998.

15 3.5 Other Charges or Payments. The Lessee shall not be  
16 obligated to pay water service capital charges or M&I subcontract  
17 charges or any other charges or payments for the Project Water  
18 other than as provided in Subparagraphs 3.3, 3.4, 3.5 and 3.12 of  
19 this Project Water Lease Agreement. The Lessee shall pay any  
20 charges or payments imposed against the Lessor with respect to the  
21 leased Project Water during the term of this Project Water Lease  
22 Agreement.

23 3.6 Delivery of Water. The United States or CAWCD shall  
24 deliver the Lessor's Project Water to the Lessee as further  
25 provided herein; however, neither the United States nor CAWCD shall  
26 be obligated to make such deliveries if, in the judgment of CAWCD

1 or the Secretary, delivery or schedule of deliveries to the Lessee  
2 would limit deliveries of CAP water to other CAP subcontractors to  
3 a degree greater than deliveries to the Lessor. The United States  
4 or CAWCD shall deliver water to the Lessee in accordance with water  
5 delivery schedules provided by the Lessee to the United States and  
6 CAWCD. The water ordering procedures contained in Article 4.4 of  
7 the Lessee's CAP M&I Water Service Subcontract shall apply to the  
8 Lessee's ordering of water under this Project Water Lease Agree-  
9 ment. In no event shall the United States or CAWCD be required to  
10 deliver to the Lessee from the Water Supply System in any one month  
11 a total amount of Project Water greater than eleven percent (11%)  
12 of the Lessee's maximum entitlement under this Project Water Lease  
13 Agreement; provided, however, that the United States or CAWCD may  
14 deliver a greater percentage in any month if such increased deliv-  
15 ery is compatible with the overall delivery of Project Water to all  
16 CAP subcontractors as determined by the United States and CAWCD if  
17 the Lessee agrees to accept such increased deliveries.

18 3.6.1 Sharing of Shortages. In the event of a  
19 shortage resulting in the Lessor's share of Project Water under the  
20 CAP Delivery Contract falling below 13,300 acre feet in any year,  
21 such shortage shall be shared pro rata among the Arizona Cities of  
22 Glendale, Phoenix, Chandler, Mesa, Scottsdale, and Tempe and the  
23 Arizona Town of Gilbert in accordance with the percentages set  
24 forth in Paragraph 19.6 of the SRPMIC Agreement.

25 3.7 Use of Project Water Outside Reservation. The  
26 Lessee may use or deliver Project Water for use outside the

1 boundaries of the reservation, but may not use or deliver Project  
2 Water for use outside of the boundaries of CAWCD.

3           3.8 Conditions Relating to Delivery and Use. Lessee  
4 shall have the right to use water received under this Project Water  
5 Lease Agreement for any purpose consistent with Arizona law, in-  
6 cluding ground water recharge as that term is defined in Contract  
7 No. 14-06-W-245 between the United States and CAWCD dated  
8 December 15, 1972, as amended on December 1, 1988, hereinafter  
9 referred to as the "Repayment Contract." Deliveries of Project  
10 Water to the Lessee and its use by the Lessee shall be subject to  
11 the Conditions Relating to Delivery and Use in Article 4.3 of the  
12 Lessee's CAP M&I Water Service Subcontract. During the term of  
13 this Project Water Lease Agreement, the following subarticles or  
14 articles of the Lessee's CAP M&I Water Service Subcontract shall  
15 apply to the Lessee and to the Lessee's use of water under the  
16 Project Water Lease Agreement: Subarticles 4.5(c), 4.5(d), and  
17 5.2(f); Articles 4.9, 4.10, 5.3, 5.4, 5.5, 6.4, 6.6, 6.9, 6.10,  
18 6.11, and 6.13. Lessee expressly approves and agrees to all the  
19 terms presently set out in the Repayment Contract, or as such terms  
20 may be hereafter amended, and agrees to be bound by the actions to  
21 be taken and the determinations to be made under that Repayment  
22 Contract, except as otherwise provided.

23           3.9 Secretarial Control of Return Flow. Project Water  
24 used by the Lessee pursuant to the provisions of this Project Water  
25 Lease Agreement shall be subject to the terms relating to the  
26 . . .

1 Secretary's right to control return flow as provided in Article 4.8  
2 of the Lessee's CAP M&I Water Service Subcontract.

3       3.10 Points of Delivery. The Project Water to be deliv-  
4 ered to the Lessee pursuant to the provisions of this Project Water  
5 Lease Agreement shall be delivered at turnouts to be constructed by  
6 the United States at such points on the Water Supply System as have  
7 been previously agreed upon by the Contracting Officer and the  
8 Lessee in accordance with the provisions of Article 4.5 of the  
9 Lessee's CAP M&I Water Service Subcontract.

10       3.11 Lessor's Covenants. The Lessor agrees:

11           A. To observe and perform all obligations imposed  
12           on the Lessor under the CAP Delivery Contract  
13           which are not assumed by the Lessee so that the  
14           Lessee's rights and duties are not in any way  
15           impaired;

16           B. Not to execute any other lease of the Lessor's  
17           right to the delivery of Project Water under  
18           the CAP Delivery Contract which would impair  
19           the Lessee's rights and duties hereunder;

20           C. Not to alter or modify the terms of the CAP  
21           Delivery Contract, except as provided herein,  
22           in such a way as to impair the Lessee's rights  
23           hereunder or exercise any option required or  
24           permitted by the CAP Delivery Contract so as to  
25           interfere with or change the rights and obliga-  
26           tions of the Lessee hereunder; and

1           D.   Not to terminate or cancel the CAP Delivery  
2           Contract or transfer, convey or permit a trans-  
3           fer or conveyance of the Contract so as to  
4           cause a termination of, interference with, or  
5           modification of the rights and obligations  
6           under the CAP Delivery Contract.

7           3.12 Lessee Assignment.   The Lessee may not transfer,  
8   assign or sublease all or any part of its interest in Project Water  
9   outside the boundaries of its existing or future service area with-  
10   out the prior written consent of the Lessor and the Secretary;  
11   provided that the Lessee shall not transfer, assign, or sublease  
12   all or any part of its interest in Project Water hereunder for an  
13   amount in excess of that which the Lessee is obligated to pay under  
14   this Project Water Lease Agreement without the additional prior  
15   written approval of CAWCD and the Secretary.   If Project Water  
16   under this Project Water Lease Agreement is transferred, assigned  
17   or subleased by the Lessee for an amount in excess of that which  
18   the Lessee paid for such water under this Project Water Lease  
19   Agreement, the excess amount shall be paid forthwith by the Lessee  
20   to the CAWCD for application against CAWCD's repayment obligation  
21   to the United States; Provided, however, That the Lessee shall be  
22   entitled to recover actual costs of transportation, treatment, and  
23   distribution, including but not limited to capital costs and OM&R  
24   costs.   The Lessee shall not transfer, assign or sublease all or  
25   any part of its interest in Project Water if such transfer, assign-  
26   ment or sublease will adversely affect the Lessor without the prior



1 written approval of Lessor. Lessee shall provide to CAWCD and the  
2 United States copies of any agreement transferring, assigning or  
3 subleasing all or any portion of Lessee's entitlement under this  
4 Project Water Lease Agreement. Approval is hereby granted by the  
5 Secretary and the Lessor to the Lessee for the transfer, assignment  
6 or sublease of all or any part of its interest in Project Water  
7 under this Project Water Lease Agreement to the Arizona Cities of  
8 Phoenix, Chandler, Mesa, Scottsdale and Tempe, and the Arizona Town  
9 of Gilbert, or to its successor(s) in interest within the boundar-  
10 ies of its existing or future service area. Such approval shall be  
11 effective only upon the agreement by such transferee, assignee, or  
12 sublessee to pay all applicable water service charges associated  
13 with the delivery of Project Water, and otherwise to abide by all  
14 terms and conditions of this Project Water Lease Agreement.

15           3.13 CAWCD Repayment. For the purpose of determining the  
16 allocation and repayment of costs of the CAP as provided in Article  
17 9.3 of Contract No. 14-06-W-245 between the United States and CAWCD  
18 dated December 15, 1972, and any amendment or revision thereof, the  
19 costs associated with the delivery of water pursuant to this Water  
20 Project Lease Agreement shall be nonreimbursable, and such costs  
21 shall be excluded from CAWCD's repayment obligation.

22 4. GENERAL PROVISIONS

23           4.1 United States Consent to Lease. The United States  
24 hereby approves and consents to this Project Water Lease Agreement.

25 . . .

26 . . .

1           4.2 Effective Date. This Project Water Lease Agreement  
2 shall become effective on the enforceability date of the SRPMIC  
3 Agreement as set forth in Paragraph 21.6 thereof.

4           4.3 Effect of SRPMIC Agreement. On the enforceability  
5 date of the SRPMIC Agreement, this Project Water Lease Agreement  
6 shall be effective and enforceable between the Lessor and the  
7 Lessee notwithstanding the performance or non-performance of other  
8 provisions of the SRPMIC Agreement not related to this Project  
9 Water Lease Agreement. The provisions of the SRPMIC Agreement that  
10 are related to this Project Water Lease Agreement are set forth in  
11 Paragraph 19.0 of the SRPMIC Agreement.

12           4.4 Invalidity of Agreement. If the Lessee's  
13 entitlement to Project Water under this Project Water Lease  
14 Agreement is determined to be invalid by a final judgment entered  
15 over the objection of the Lessee with the result that the Lessor  
16 reacquires the right to receive the Project Water, then the Lessor  
17 shall refund to the Lessee that portion of the lease payment that  
18 the number of years remaining in the lease term at the time of such  
19 determination bears to the total lease term.

20           4.5 Curing for Lessee's Nonpayment. If the initial  
21 payment is not made on or before the date such payment is due, or  
22 if any successive lease payment is not made on the date such pay-  
23 ment is due, the Lessee shall be in default and the Lessor shall  
24 give written notice of default to the defaulting Lessee. The  
25 Lessor shall also send a copy of the notice of default to each  
26 other party to the SRPMIC Agreement which has entered into a

1 Project Water Lease Agreement for the lease of the Lessor's Project  
2 Water ("Other Cities"). Notice shall be given in the manner and to  
3 the city officers specified in Paragraph 21.17 of the SRPMIC  
4 Agreement. The notice of default shall specifically describe the  
5 default and state the amount due by such Lessee ("Default  
6 Amount"). After notice of default, the rights of the Lessee, the  
7 Lessor and the Other Cities shall be as follows:

8           A. During the first thirty (30) days following the  
9           notice of default ("First Grace Period"), the  
10          defaulting Lessee shall have the exclusive  
11          right to cure any such default by tendering the  
12          Default Amount to the Lessor together with  
13          interest on the Default Amount accrued at the  
14          annual rate of ten percent (10%) calculated  
15          from the due date. During the First Grace  
16          Period, the defaulting Lessee may cure only by  
17          tendering the Default Amount.

18          B. In the event that the defaulting Lessee has not  
19          cured within thirty (30) days following the  
20          notice of default, the Lessee, any of the Other  
21          Cities, and/or any combination thereof, may  
22          thereafter, but within sixty (60) days follow-  
23          ing the notice of default ("Second Grace  
24          Period"), cure the default by tendering the  
25          Default Amount to the Lessor together with  
26          interest on the Default Amount accrued at the

annual rate of ten percent (10%) calculated from the due date. Each curing city or town shall succeed to the interest of the defaulting Lessee to the extent of its contribution. A cure effected pursuant to this section shall constitute full performance of such payment obligation.

C. After notice of default and after failure to cure as provided for in Paragraphs 4.5.A. and B. hereof, the defaulting Lessee will be indebted to the Lessor in the amount of \$2,182,400 less principal payments made before the default together with interest, costs and reasonable attorneys' fees and the Lessor will be entitled to judgment for such an amount. Payment of the amount provided in this subparagraph shall constitute full performance of the Lessee's obligations under Paragraph 3.3 of this Project Water Lease Agreement.

IN WITNESS WHEREOF the parties have executed this Project Water Lease Agreement on the date written above.

THE UNITED STATES OF AMERICA

By Wilson Barber  
Bureau of Indian Affairs

By W. H. E. T. A.  
Bureau of Reclamation

...

...

Attest:

THE SALT RIVER PIMA-MARICOPA  
INDIAN COMMUNITY

By

Name: Gerald Anton  
Title: President

Attest:

CITY OF GLENDALE, an Arizona  
municipal corporation

City Clerk

Attest:

By

Name: \_\_\_\_\_

Title:

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Attest:

\_\_\_\_\_

THE SALT RIVER PIMA-MARICOPA  
INDIAN COMMUNITY

By \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Attest:

Jawerone Behm  
City Clerk

CITY OF GLENDALE, an Arizona  
municipal corporation

By \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

George R. Renner  
Mayor

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EXHIBIT "3.m.3"

15

City of Scottsdale - SRPMIC Project Water Lease Agreement

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PROJECT WATER LEASE AGREEMENT

1. PREAMBLE

This Project Water Lease Agreement, made as of the 12th day of February, 1988, is between the United States of America (hereinafter "United States"), the Salt River Pima-Maricopa Indian Community (hereinafter "Lessor") and the City of Scottsdale, Arizona (hereinafter "Lessee"), witnesseth that:

2. EXPLANATORY RECITALS

WHEREAS, the parties to this Project Water Lease Agreement are also parties to the Salt River Pima-Maricopa Indian Community Water Settlement Agreement dated as of February 12, 1988 (the "SRPMIC Agreement");

WHEREAS, Paragraph 19.0 of the SRPMIC Agreement obligates the United States, the Lessor and the Lessee to enter into an agreement for the lease by the Lessor to the Lessee of Project Water to which the Lessor is entitled under the Central Arizona Project Indian Delivery Contract dated December 11, 1980 (the "CAP Delivery Contract"); and

WHEREAS, by the Act of October 20, 1988, 102 Stat. 2549 "Authorizing Legislation"), the United States confirmed the SRPMIC Agreement and specifically authorized the amendment of the CAP Delivery Contract and the lease of the Lessor's rights to Project Water to the Lessee; and

WHEREAS, pursuant to the SRPMIC Agreement and the Authorizing Legislation, the United States and the Lessor have executed a First . . .



1 Amendment to the CAP Delivery Contract which authorizes the Lessor  
2 to make this Project Water Lease Agreement;

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

6 3. LEASE OF PROJECT WATER

7 3.1 Subject of Lease. The Lessor leases to the Lessee the  
8 right to the delivery of 60 acre-feet per year of Project Water  
9 under the CAP Delivery Contract, subject to the terms and condi-  
10 tions of the CAP Delivery Contract except as modified herein.

11 3.2 Term of Lease. The term of this Project Water Lease  
12 Agreement shall commence on January 1, 2000, and end on  
13 December 30, 2098.

14 3.3 Lessee's Payment for Lease. The consideration for this  
15 Project Water Lease Agreement is the payment by the Lessee to the  
16 Lessor of the sum of \$72,000, which amount is due and payable on  
17 the effective date of this Project Water Lease Agreement. In lieu  
18 of making payment in full upon the effective date of this Project  
19 Water Lease Agreement, the Lessee may elect to make payment in  
20 either of the following ways:

21 A. An initial down payment of \$36,000 on the effective date  
22 of this Project Water Lease Agreement, with four (4)  
23 annual payments, payable on the next four (4) anniversary  
24 dates of the effective date of this Project Water Lease  
25 Agreement, of \$9,000 each, together with interest on the  
26 unpaid balance at an annual rate determined as follows:

1           one percent (1%) over the net interest rate paid by the  
2           City of Phoenix on its Water Renewal Refunding Bonds,  
3           Series 1986, determined as of the effective date of this  
4           Project Water Lease Agreement. Interest accrued shall  
5           not be added to principal and shall not itself bear  
6           interest unless delinquent.

7           B. An initial payment of \$9,000 on the effective date of  
8           this Project Water Lease Agreement, with seven (7) annual  
9           payments payable on the next seven (7) anniversary dates  
10          of the effective date of this Project Water Lease  
11          Agreement of \$9,000 each, together with interest on the  
12          unpaid balance at an annual rate of one percent (1%) over  
13          the Valley National Bank Home Office prime rate  
14          determined as of the effective date of this Project Water  
15          Lease Agreement.

16                 Interest under this subparagraph B shall be  
17                 calculated as follows: If, for example, the Lessee  
18                 elects to pay under this subparagraph B, and the Valley  
19                 National Bank Home Office prime rate as of the effective  
20                 date of this Lease is seven percent (7%), the second  
21                 annual installment shall be in the principal amount of  
22                 \$9,000 plus interest in the amount of \$5,040, for a total  
23                 payment of \$14,040. The third annual installment shall  
24                 be in the principal amount of \$9,000 plus interest in the  
25                 amount of \$4,320, for a total payment of \$13,320.

26           . . .

1 Without any prepayment penalty, the Lessee may at any time elect to  
2 pay the balance in full together with interest on the unpaid  
3 balance to the date of such payment.

4       3.4 Operation, Maintenance and Replacement Costs. The Lessee  
5 shall pay the full amount of the water service charges for  
6 operation, maintenance and replacement costs for the Project Water  
7 to the United States or, if so directed by the Secretary, to the  
8 Central Arizona Water Conservation District ("CAWCD") in accordance  
9 with Article 5.1 of the Lessee's CAP M&I Water Service Subcontract,  
10 except that the Lessee's obligation to pay operation, maintenance  
11 and replacement charges shall not begin earlier than October 1,  
12 1998.

13       3.5 Other Charges or Payments. The Lessee shall not be  
14 obligated to pay water service capital charges or M&I subcontract  
15 charges or any other charges or payments for the Project Water  
16 other than as provided in Subparagraphs 3.3, 3.4, 3.5 and 3.12 of  
17 this Project Water Lease Agreement. The Lessee shall pay any  
18 charges or payments imposed against the Lessor with respect to the  
19 leased Project Water during the term of this Project Water Lease  
20 Agreement.

21       3.6 Delivery of Water. The United States or CAWCD shall  
22 deliver the Lessor's Project Water to the Lessee as further  
23 provided herein; however, neither the United States nor CAWCD shall  
24 be obligated to make such deliveries if, in the judgment of CAWCD  
25 or the Secretary, delivery or schedule of deliveries to the Lessee  
26 would limit deliveries of CAP water to other CAP subcontractors to

1 a degree greater than deliveries to the Lessor. The United States  
2 or CAWCD shall deliver water to the Lessee in accordance with water  
3 delivery schedules provided by the Lessee to the United States and  
4 CAWCD. The water ordering procedures contained in Article 4.4 of  
5 the Lessee's CAP M&I Water Service Subcontract shall apply to the  
6 Lessee's ordering of water under this Project Water Lease  
7 Agreement. In no event shall the United States or CAWCD be  
8 required to deliver to the Lessee from the Water Supply System in  
9 any one month a total amount of Project Water greater than eleven  
10 percent (11%) of the Lessee's maximum entitlement under this  
11 Project Water Lease Agreement; provided, however, that the United  
12 States or CAWCD may deliver a greater percentage in any month if  
13 such increased delivery is compatible with the overall delivery of  
14 Project Water to all CAP subcontractors as determined by the United  
15 States and CAWCD if the Lessee agrees to accept such increased  
16 deliveries.

17 3.6.1 Sharing of Shortages. In the event of a shortage  
18 resulting in the Lessor's share of Project Water under the CAP  
19 Delivery Contract falling below 13,300 acre feet in any year, such  
20 shortage shall be shared pro rata among the Arizona Cities of  
21 Glendale, Phoenix, Chandler, Mesa, Scottsdale, and Tempe and the  
22 Arizona Town of Gilbert in accordance with the percentages set  
23 forth in Paragraph 19.6 of the SRPMIC Agreement.

24 3.7 Use of Project Water Outside Reservation. The Lessee may  
25 use or deliver Project Water for use outside the boundaries of the  
26 . . .

1 reservation, but may not use or deli Project Water for use  
2 outside of the boundaries of CAWCD.

3 3.8 Conditions Relating to Delivery and Use. Lessee shall  
4 have the right to use water received under this Project Water Lease  
5 Agreement for any purpose consistent with Arizona law, including  
6 ground water recharge as that term is defined in Contract  
7 No. 14-06-W-245 between the United States and CAWCD dated  
8 December 15, 1972, as amended on December 1, 1988, hereinafter  
9 referred to as the "Repayment Contract." Deliveries of Project  
10 Water to the Lessee and its use by the Lessee shall be subject to  
11 the Conditions Relating to Delivery and Use in Article 4.3 of the  
12 Lessee's CAP M&I Water Service Subcontract. During the term of  
13 this Project Water Lease Agreement, the following subarticles or  
14 articles of the Lessee's CAP M&I Water Service Subcontract shall  
15 apply to the Lessee and to the Lessee's use of water under this  
16 Project Water Lease Agreement: Subarticles 4.5(c), 4.5(d), and  
17 5.2(f); Articles 4.9, 4.10, 5.3, 5.4, 5.5, 6.4, 6.6, 6.9, 6.10,  
18 6.11, and 6.13. Lessee expressly approves and agrees to all the  
19 terms presently set out in the Repayment Contract, or as such terms  
20 may be hereafter amended, and agrees to be bound by the actions to  
21 be taken and the determinations to be made under that Repayment  
22 Contract, except as otherwise provided herein.

23 3.9 Secretarial Control of Return Flow. Project Water used by  
24 the Lessee pursuant to the provisions of this Project Water Lease  
25 Agreement shall be subject to the terms relating to the Secretary's  
26 . . .

1 right to control return flow as provided in Article 4.8 of the  
2 Lessee's CAP M&I Water Service Subcontract.

3 3.10 Points of Delivery. The Project Water to be delivered to  
4 the Lessee pursuant to the provisions of this Project Water Lease  
5 Agreement shall be delivered at turnouts to be constructed by the  
6 United States at such points on the Water Supply System as have  
7 been previously agreed upon by the Contracting Officer and the  
8 Lessee in accordance with the provisions of Article 4.5 of the  
9 Lessee's CAP M&I Water Service Subcontract.

10 3.11 Lessor's Covenants. The Lessor agrees:

11 (A) To observe and perform all obligations imposed on the  
12 Lessor under the CAP Delivery Contract which are not assumed  
13 by the Lessee so that the Lessee's rights and duties are not  
14 in any way impaired;

15 (B) Not to execute any other lease of the Lessor's right  
16 to the delivery of Project Water under the CAP Delivery  
17 Contract which would impair the Lessee's rights and duties  
18 hereunder;

19 (C) Not to alter or modify the terms of the CAP Delivery  
20 Contract, except as provided herein, in such a way as to  
21 impair the Lessee's rights hereunder or exercise any option  
22 required or permitted by the CAP Delivery Contract so as to  
23 interfere with or change the rights and obligations of the  
24 Lessee hereunder; and

25 (D) Not to terminate or cancel the CAP Delivery Contract  
26 or transfer, convey or permit a transfer or conveyance of the

1 Contract so as to cause a termination of, interference with,  
2 or modification of the rights and obligations under the CAP  
3 Delivery Contract.

4 3.12 Lessee Assignment. The Lessee may not transfer, assign  
5 or sublease all or any part of its interest in Project Water  
6 outside the boundaries of its existing or future service area  
7 without the prior written consent of the Lessor and the Secretary;  
8 Provided, That the Lessee shall not transfer, assign, or sublease  
9 all or any part of its interest in Project Water hereunder for an  
10 amount in excess of that which the Lessee is obligated to pay under  
11 this Project Water Lease Agreement without the additional prior  
12 written approval of CAWCD and the Secretary. If Project Water  
13 under this Project Water Lease Agreement is transferred, assigned  
14 or subleased by the Lessee for an amount in excess of that which  
15 the Lessee paid for such water under this Project Water Lease  
16 Agreement, the excess amount shall be paid forthwith by the Lessee  
17 to the CAWCD for application against CAWCD's repayment obligation  
18 to the United States; Provided, however, That the Lessee shall be  
19 entitled to recover actual costs of transportation, treatment, and  
20 distribution, including but not limited to capital costs and OM&R  
21 costs. The Lessee shall not transfer, assign or sublease all or  
22 any part of its interest in Project Water if such transfer, assign-  
23 ment or sublease will adversely affect the Lessor without the prior  
24 written approval of Lessor. Lessee shall provide to CAWCD and the  
25 United States copies of any agreement transferring, assigning or  
26 subleasing all or any portion of Lessee's entitlement under this

1 Project Water Lease Agreement. Approval is hereby granted by the  
2 Secretary and the Lessor to the Lessee for the transfer, assignment  
3 or sublease of all or any part of its interest in Project Water  
4 under this Project Water Lease Agreement to the Arizona Cities of  
5 Phoenix, Glendale, Mesa, Chandler and Tempe, and the Arizona Town  
6 of Gilbert, or to its successor(s) in interest within the  
7 boundaries of its existing or future service area. Such approval  
8 shall be effective only upon the agreement by such transferee,  
9 assignee, or sublessee to pay all applicable water service charges  
10 associated with the delivery of Project Water, and otherwise to  
11 abide by all terms and conditions of this Project Water Lease  
12 Agreement.

13 3.13 CAWCD Repayment. For the purpose of determining the  
14 allocation and repayment of costs of the CAP as provided in Article  
15 9.3 of Contract No. 14-06-W-245 between the United States and CAWCD  
16 dated December 15, 1972, and any amendment or revision thereof, the  
17 costs associated with the delivery of water pursuant to this Water  
18 Project Lease Agreement shall be nonreimbursable, and such costs  
19 shall be excluded from CAWCD's repayment obligation.

20 4. GENERAL PROVISIONS

21 4.1 United States Consent to Lease. The United States hereby  
22 approves and consents to this Project Water Lease Agreement.

23 4.2 Effective Date. This Project Water Lease Agreement shall  
24 become effective on the enforceability date of the SRPMIC Agreement  
25 as set forth in Paragraph 21.6 thereof.

26 . . .



1       4.3 Effect of SRPMIC Agreement. On the enforceability date of  
2 the SRPMIC Agreement, this Project Water Lease Agreement shall be  
3 effective and enforceable between the Lessor and the Lessee  
4 notwithstanding the performance or non-performance of other  
5 provisions of the SRPMIC Agreement not related to this Project  
6 Water Lease Agreement. The provisions of the SRPMIC Agreement that  
7 are related to this Project Water Lease Agreement are set forth in  
8 Paragraph 19.0 of the SRPMIC Agreement.

9       4.4 Invalidity of Agreement. If the Lessee's entitlement to  
10 Project Water under this Project Water Lease Agreement is  
11 determined to be invalid by a final judgment entered over the  
12 objection of the Lessee with the result that the Lessor reacquires  
13 the right to receive the Project Water, then the Lessor shall  
14 refund to the Lessee that portion of the lease payment that the  
15 number of years remaining in the lease term at the time of such  
16 determination bears to the total lease term.

17       4.5 Curing for Lessee's Nonpayment. If the initial payment is  
18 not made on or before the date such payment is due, or if any  
19 successive lease payment is not made on the date such payment is  
20 due, the Lessee shall be in default and the Lessor shall give  
21 written notice of default to the defaulting Lessee. The Lessor  
22 shall also send a copy of the notice of default to each other party  
23 to the SRPMIC Agreement which has entered into a Project Water  
24 Lease Agreement for the lease of the Lessor's Project Water ("Other  
25 Cities"). Notice shall be given in the manner and to the city  
26 officers specified in Paragraph 21.17 of the SRPMIC Agreement. The

1 notice of default shall specifically describe the default and state  
2 the amount due by such Lessee ("Default Amount"). After notice of  
3 default, the rights of the Lessee, the Lessor and the Other Cities  
4 shall be as follows:

5 A. During the first thirty (30) days following the notice of  
6 default ("First Grace Period"), the defaulting Lessee  
7 shall have the exclusive right to cure any such default  
8 by tendering the Default Amount to the Lessor together  
9 with interest on the Default Amount accrued at the annual  
10 rate of ten percent (10%) calculated from the due date.  
11 During the First Grace Period, the defaulting Lessee may  
12 cure only by tendering the Default Amount.

13 B. In the event that the defaulting Lessee has not cured  
14 within thirty (30) days following the notice of default,  
15 the Lessee, any of the Other Cities, and/or any  
16 combination thereof, may thereafter, but within sixty  
17 (60) days following the notice of default ("Second Grace  
18 Period"), cure the default by tendering the Default  
19 Amount to the Lessor together with interest on the  
20 Default Amount accrued at the annual rate of ten percent  
21 (10%) calculated from the due date. Each curing city or  
22 town shall succeed to the interest of the defaulting  
23 Lessee to the extent of its contribution. A cure  
24 effected pursuant to this section shall constitute full  
25 performance of such payment obligation.

26 . . .

IN WITNESS WHEREOF the parties have executed this Project  
Water Lease Agreement on the date written above.

By William Barber  
Bureau of Indian Affairs

By [Signature]  
Bureau of Reclamation

THE SALT RIVER PIMA-MARICOPA  
INDIAN COMMUNITY

By

Name: Gerald Antier  
Title: President

CITY OF SCOTTSDALE, an Arizona  
municipal corporation

City Clerk

Attest:

By

Name :

Title:

City Attorney

/ / /

1 C. After notice of default and after failure to cure as  
2 provided for in Paragraphs 4.5.A. and B. hereof, the  
3 defaulting Lessee will be indebted to the Lessor in the  
4 amount of \$72,000 less principal payments made before the  
5 default together with interest, costs and reasonable  
6 attorneys' fees and the Lessor will be entitled to  
7 judgment for such an amount. Payment of the amount  
8 provided in this subparagraph shall constitute full  
9 performance of the Lessee's obligations under Paragraph  
10 3.3 of this Project Water Lease Agreement.

11 IN WITNESS WHEREOF the parties have executed this Project  
12 Water Lease Agreement on the date written above.

13 THE UNITED STATES OF AMERICA

14  
15 By \_\_\_\_\_

16 Attest:

17 THE SALT RIVER PIMA-MARICOPA  
18 INDIAN COMMUNITY

19 By \_\_\_\_\_

20 Name: \_\_\_\_\_  
21 Title: \_\_\_\_\_

22 Attest:

23 CITY OF SCOTTSDALE, an Arizona  
24 municipal corporation

25 Mark G. Meyer  
26 City Clerk

Attest:

Paul R. J. [Signature]  
City Attorney

By

Herbert R. Drinkwater  
Name: Herbert R. Drinkwater  
Title: Mayor

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EXHIBIT "3.m.4"

City of Tempe - SRPMIC Project Water Lease Agreement

PROJECT WATER LEASE AGREEMENT

1. PREAMBLE

This Project Water Lease Agreement, made as of the 12th day of February, 1988, is between the United States of America (hereinafter "United States"), the Salt River Pima-Maricopa Indian Community (hereinafter "Lessor") and the City of Tempe, Arizona (hereinafter "Lessee"), witnesseth that:

2. EXPLANATORY RECITALS

WHEREAS, the parties to this Project Water Lease Agreement are also parties to the Salt River Pima-Maricopa Indian Community Water Settlement Agreement dated as of February 12, 1988 (the "SRPMIC Agreement");

WHEREAS, Paragraph 19.0 of the SRPMIC Agreement obligates the United States, the Lessor and the Lessee to enter into an agreement for the lease by the Lessor to the Lessee of Project Water to which the Lessor is entitled under the Central Arizona Project Indian Delivery Contract dated December 11, 1980 (the "CAP Delivery Contract"); and

WHEREAS, by the Act of October 20, 1988, 102 Stat. 2549 (the "Authorizing Legislation"), the United States confirmed the SRPMIC Agreement and specifically authorized the amendment of the CAP Delivery Contract and the lease of the Lessor's rights to Project Water to the Lessee; and

WHEREAS, pursuant to the SRPMIC Agreement and the Authorizing Legislation, the United States and the Lessor have executed a First . . .

1 Amendment to the CAP Delivery Contract which authorizes the Lessor  
2 to make this Project Water Lease Agreement;

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

6 3. LEASE OF PROJECT WATER

7 3.1 Subject of Lease. The Lessor leases to the Lessee the  
8 right to the delivery of 60 acre-feet per year of Project Water  
9 under the CAP Delivery Contract, subject to the terms and  
10 conditions of the CAP Delivery Contract except as modified herein.

11 3.2 Term of Lease. The term of this Project Water Lease  
12 Agreement shall commence on January 1, 2000, and end on  
13 December 30, 2098.

14 3.3 Lessee's Payment for Lease. The consideration for this  
15 Project Water Lease Agreement is the payment by the Lessee to the  
16 Lessor of the sum of \$72,000, which amount is due and payable on  
17 the effective date of this Project Water Lease Agreement. In lieu  
18 of making payment in full upon the effective date of this Project  
19 Water Lease Agreement, the Lessee may elect to make payment in  
20 either of the following ways:

21 A. An initial down payment of \$36,000 on the effective date  
22 of this Project Water Lease Agreement, with four (4)  
23 annual payments, payable on the next four (4) anniversary  
24 dates of the effective date of this Project Water Lease  
25 Agreement, of \$9,000 each, together with interest on the  
26 unpaid balance at an annual rate determined as follows:

1           one percent (1%) over the net interest rate paid by the  
2           City of Phoenix on its Water Renewal Refunding Bonds,  
3           Series 1986, determined as of the effective date of this  
4           Project Water Lease Agreement. Interest accrued shall  
5           not be added to principal and shall not itself bear  
6           interest unless delinquent.

7           B. An initial payment of \$9,000 on the effective date of  
8           this Project Water Lease Agreement, with seven (7) annual  
9           payments payable on the next seven (7) anniversary dates  
10          of the effective date of this Project Water Lease  
11          Agreement of \$9,000 each, together with interest on the  
12          unpaid balance at an annual rate of one percent (1%) over  
13          the Valley National Bank Home Office prime rate  
14          determined as of the effective date of this Project Water  
15          Lease Agreement.

16                 Interest under this subparagraph B shall be  
17                 calculated as follows: If, for example, the Lessee  
18                 elects to pay under this subparagraph B, and the Valley  
19                 National Bank Home Office prime rate as of the effective  
20                 date of this Lease is seven percent (7%), the second  
21                 annual installment shall be in the principal amount of  
22                 \$9,000 plus interest in the amount of \$5,040, for a total  
23                 payment of \$14,040. The third annual installment shall  
24                 be in the principal amount of \$9,000 plus interest in the  
25                 amount of \$4,320, for a total payment of \$13,320.

26           . . .



1 Without any prepayment penalty, the Lessee may at any time  
2 elect to pay the balance in full together with interest on the  
3 unpaid balance to the date of such payment.

4 3.4 Operation, Maintenance and Replacement Costs. The Lessee  
5 shall pay the full amount of the water service charges for  
6 operation, maintenance and replacement costs for the Project Water  
7 to the United States or, if so directed by the Secretary, to the  
8 Central Arizona Water Conservation District ("CAWCD") in accordance  
9 with Article 5.1 of the Lessee's CAP M&I Water Service Subcontract,  
10 except that the Lessee's obligation to pay operation, maintenance  
11 and replacement charges shall not begin earlier than October 1,  
12 1998.

13 3.5 Other Charges or Payments. The Lessee shall not be  
14 obligated to pay water service capital charges or M&I subcontract  
15 charges or any other charges or payments for the Project Water  
16 other than as provided in Subparagraphs 3.3, 3.4, 3.5 and 3.12 of  
17 this Project Water Lease Agreement. The Lessee shall pay any  
18 charges or payments imposed against the Lessor with respect to the  
19 leased Project Water during the term of this Project Water Lease  
20 Agreement.

21 3.6 Delivery of Water. The United States or CAWCD shall  
22 deliver the Lessor's Project Water to the Lessee as further  
23 provided herein; however, neither the United States nor CAWCD shall  
24 be obligated to make such deliveries if, in the judgment of CAWCD  
25 or the Secretary, delivery or schedule of deliveries to the Lessee  
26 would limit deliveries of CAP water to other CAP subcontractors to

1 a degree greater than deliveries to the Lessor. The United States  
2 or CAWCD shall deliver water to the Lessee in accordance with water  
3 delivery schedules provided by the Lessee to the United States and  
4 CAWCD. The water ordering procedures contained in Article 4.4 of  
5 the Lessee's CAP M&I Water Service Subcontract shall apply to the  
6 Lessee's ordering of water under this Project Water Lease  
7 Agreement. In no event shall the United States or CAWCD be  
8 required to deliver to the Lessee from the Water Supply System in  
9 any one month a total amount of Project Water greater than eleven  
10 percent (11%) of the Lessee's maximum entitlement under this  
11 Project Water Lease Agreement; provided, however, that the United  
12 States or CAWCD may deliver a greater percentage in any month if  
13 such increased delivery is compatible with the overall delivery of  
14 Project Water to all CAP subcontractors as determined by the United  
15 States and CAWCD if the Lessee agrees to accept such increased  
16 deliveries.

17 3.6.1 Sharing of Shortages. In the event of a shortage  
18 resulting in the Lessor's share of Project Water under the CAP  
19 Delivery Contract falling below 13,300 acre feet in any year, such  
20 shortage shall be shared pro rata among the Arizona Cities of  
21 Glendale, Phoenix, Chandler, Mesa, Scottsdale, and Tempe and the  
22 Arizona Town of Gilbert in accordance with the percentages set  
23 forth in Paragraph 19.6 of the SRPMIC Agreement.

24 3.7 Use of Project Water Outside Reservation. The Lessee may  
25 use or deliver Project Water for use outside the boundaries of the  
26 . . . .

1 reservation, but may not use or deliver Project Water for use  
2 outside of the boundaries of CAWCD.

3       3.8 Conditions Relating to Delivery and Use. Lessee shall  
4 have the right to use water received under this Project Water Lease  
5 Agreement for any purpose consistent with Arizona law, including  
6 ground water recharge as that term is defined in Contract  
7 No. 14-06-W-245 between the United States and CAWCD dated  
8 December 15, 1972, as amended on December 1, 1988, hereinafter  
9 referred to as the "Repayment Contract." Deliveries of Project  
10 Water to the Lessee and its use by the Lessee shall be subject to  
11 the Conditions Relating to Delivery and Use in Article 4.3 of the  
12 Lessee's CAP M&I Water Service Subcontract. During the term of  
13 this Project Water Lease Agreement, the following subarticles or  
14 articles of the Lessee's CAP M&I Water Service Subcontract shall  
15 apply to the Lessee and to the Lessee's use of water under this  
16 Project Water Lease Agreement: Subarticles 4.5(c), 4.5(d), and  
17 5.2(f); Articles 4.9, 4.10, 5.3, 5.4, 5.5, 6.4, 6.6, 6.9, 6.10,  
18 6.11, and 6.13. Lessee expressly approves and agrees to all the  
19 terms presently set out in the Repayment Contract, or as such terms  
20 may be hereafter amended, and agrees to be bound by the actions to  
21 be taken and the determinations to be made under that Repayment  
22 Contract, except as otherwise provided herein.

23       3.9 Secretarial Control of Return Flow. Project Water used  
24 by the Lessee pursuant to the provisions of this Project Water  
25 Lease Agreement shall be subject to the terms relating to the  
26 . . .

1 Secretary's right to control return flow as provided in Article 4.8  
2 of the Lessee's CAP M&I Water Service Subcontract.

3 3.10 Points of Delivery. The Project Water to be delivered to  
4 the Lessee pursuant to the provisions of this Project Water Lease  
5 Agreement shall be delivered at turnouts to be constructed by the  
6 United States at such points on the Water Supply System as have  
7 been previously agreed upon by the Contracting Officer and the  
8 Lessee in accordance with the provisions of Article 4.5 of the  
9 Lessee's CAP M&I Water Service Subcontract.

10 3.11 Lessor's Covenants. The Lessor agrees:

- 11 A. To observe and perform all obligations imposed on the  
12 Lessor under the CAP Delivery Contract which are not  
13 assumed by the Lessee so that the Lessee's rights and  
14 duties are not in any way impaired;
- 15 B. Not to execute any other lease of the Lessor's right to  
16 the delivery of Project Water under the CAP Delivery  
17 Contract which would impair the Lessee's rights and  
18 duties hereunder;
- 19 C. Not to alter or modify the terms of the CAP Delivery  
20 Contract, except as provided herein, in such a way as to  
21 impair the Lessee's rights hereunder or exercise any  
22 option required or permitted by the CAP Delivery Contract  
23 so as to interfere with or change the rights and  
24 obligations of the Lessee hereunder; and
- 25 D. Not to terminate or cancel the CAP Delivery Contract or  
26 transfer, convey or permit a transfer or conveyance of

1 the Contract so as to cause a termination of,  
2 interference with, or modification of the rights and  
3 obligations under the CAP Delivery Contract.

4 3.12 Lessee Assignment. The Lessee may not transfer, assign  
5 or sublease all or any part of its interest in Project Water  
6 outside the boundaries of its existing or future service area  
7 without the prior written consent of the Lessor and the Secretary;  
8 Provided, That the Lessee shall not transfer, assign, or sublease  
9 all or any part of its interest in Project Water hereunder for an  
10 amount in excess of that which the Lessee is obligated to pay under  
11 this Project Water Lease Agreement without the additional prior  
12 written approval of CAWCD and the Secretary. If Project Water  
13 under this Project Water Lease Agreement is transferred, assigned  
14 or subleased by the Lessee for an amount in excess of that which  
15 the Lessee paid for such water under this Project Water Lease  
16 Agreement, the excess amount shall be paid forthwith by the Lessee  
17 to the CAWCD for application against CAWCD's repayment obligation  
18 to the United States; Provided, however, That the Lessee shall be  
19 entitled to recover actual costs of transportation, treatment, and  
20 distribution, including but not limited to capital costs and OM&R  
21 costs. The Lessee shall not transfer, assign or sublease all or  
22 any part of its interest in Project Water if such transfer,  
23 assignment or sublease will adversely affect the Lessor without the  
24 prior written approval of Lessor. Lessee shall provide to CAWCD  
25 and the United States copies of any agreement transferring,  
26 assigning or subleasing all or any portion of Lessee's entitlement

1 under this Project Water Lease Agreement. Approval is hereby  
2 granted by the Secretary and the Lessor to the Lessee for the  
3 transfer, assignment or sublease of all or any part of its interest  
4 in Project Water under this Project Water Lease Agreement to the  
5 Arizona Cities of Phoenix, Glendale, Mesa, Scottsdale and Chandler,  
6 and the Arizona Town of Gilbert, or to its successor(s) in interest  
7 within the boundaries of its existing or future service area. Such  
8 approval shall be effective only upon the agreement by such  
9 transferee, assignee, or sublessee to pay all applicable water  
10 service charges associated with the delivery of Project Water, and  
11 otherwise to abide by all terms and conditions of this Project  
12 Water Lease Agreement.

13 3.13 CAWCD Repayment. For the purpose of determining the  
14 allocation and repayment of costs of the CAP as provided in Article  
15 9.3 of Contract No. 14-06-W-245 between the United States and CAWCD  
16 dated December 15, 1972, and any amendment or revision thereof, the  
17 costs associated with the delivery of water pursuant to this Water  
18 Project Lease Agreement shall be nonreimbursable, and such costs  
19 shall be excluded from CAWCD's repayment obligation.

20 4. GENERAL PROVISIONS

21 4.1 United States Consent to Lease. The United States hereby  
22 approves and consents to this Project Water Lease Agreement.

23 4.2 Effective Date. This Project Water Lease Agreement shall  
24 become effective on the enforceability date of the SRPMIC Agreement  
25 as set forth in Paragraph 21.6 thereof.

26 . . .

1  
2       4.3 Effect of SRPMIC Agreement. On the enforceability date  
3 of the SRPMIC Agreement, this Project Water Lease Agreement shall  
4 be effective and enforceable between the Lessor and the Lessee  
5 notwithstanding the performance or non-performance of other  
6 provisions of the SRPMIC Agreement not related to this Project  
7 Water Lease Agreement. The provisions of the SRPMIC Agreement that  
8 are related to this Project Water Lease Agreement are set forth in  
9 Paragraph 19.0 of the SRPMIC Agreement.

10       4.4 Invalidity of Agreement. If the Lessee's entitlement to  
11 Project Water under this Project Water Lease Agreement is  
12 determined to be invalid by a final judgment entered over the  
13 objection of the Lessee with the result that the Lessor reacquires  
14 the right to receive the Project Water, then the Lessor shall  
15 refund to the Lessee that portion of the lease payment that the  
16 number in the years remaining in the lease term at the time of such  
17 determination bears to the total lease term.

18       4.5 Curing for Lessee's Nonpayment. If the initial payment  
19 is not made on or before the date such payment is due, or if any  
20 successive lease payment is not made on the date such payment is  
21 due, the Lessee shall be in default and the Lessor shall give  
22 written notice of default to the defaulting Lessee. The Lessor  
23 shall also send a copy of the notice of default to each other party  
24 to the SRPMIC Agreement which has entered into a Project Water  
25 Lease Agreement for the lease of the Lessor's Project Water ("Other  
26 Cities"). Notice shall be given in the manner and to the city

1 officers specified in Paragraph 21.17 of the SRPMIC Agreement. The  
2 notice of default shall specifically describe the default and state  
3 the amount due by such Lessee ("Default Amount"). After notice of  
4 default, the rights of the Lessee, the Lessor and the Other Cities  
5 shall be as follows:

6       A. During the first thirty (30) days following the notice of  
7       default ("First Grace Period"), the defaulting Lessee  
8       shall have the exclusive right to cure any such default  
9       by tendering the Default Amount to the Lessor together  
10      with interest on the Default Amount accrued at the annual  
11      rate of ten percent (10%) calculated from the due date.  
12      During the First Grace Period, the defaulting Lessee may  
13      cure only by tendering the Default Amount.

14      B. In the event that the defaulting Lessee has not cured  
15      within thirty (30) days following the notice of default,  
16      the Lessee, any of the Other Cities, and/or any combina-  
17      tion thereof, may thereafter, but within sixty (60) days  
18      following the notice of default ("Second Grace Period"),  
19      cure the default by tendering the Default Amount to the  
20      Lessor together with interest on the Default Amount  
21      accrued at the annual rate of ten percent (10%) calcu-  
22      lated from the due date. Each curing city or town shall  
23      succeed to the interest of the defaulting Lessee to the  
24      extent of its contribution. A cure effected pursuant to  
25      this section shall constitute full performance of such  
26      payment obligation.



1 C. After notice of default and after failure to cure as  
2 provided for in Paragraphs 4.5.A. and B. hereof, the  
3 defaulting Lessee will be indebted to the Lessor in the  
4 amount of \$72,000 less principal payments made before the  
5 default together with interest, costs and reasonable  
6 attorneys' fees and the Lessor will be entitled to  
7 judgment for such an amount. Payment of the amount  
8 provided in this subparagraph shall constitute full  
9 performance of the Lessee's obligations under Paragraph  
10 3.3 of this Project Water Lease Agreement.

11 IN WITNESS WHEREOF the parties have executed this Project  
12 Water Lease Agreement on the date written above.

13 THE UNITED STATES OF AMERICA

14  
15 By Wilson Barker  
16 Bureau of Indian Affairs

17 By [Signature]  
18 Bureau of Reclamation

19 Attest:

20 THE SALT RIVER PIMA-MARICOPA  
21 INDIAN COMMUNITY

22 [Signature]

23 By [Signature]  
24 Name: Gerald Anton  
25 Title: President

26 Attest:

CITY OF TEMPE, an Arizona  
municipal corporation

City Clerk

Attest:

By

Name:

Title:

City Attorney

. . .

1 C. After notice of default and after failure to cure as  
2 provided for in Paragraphs 4.5.A. and B. hereof, the  
3 defaulting Lessee will be indebted to the Lessor in the  
4 amount of \$72,000 less principal payments made before the  
5 default together with interest, costs and reasonable  
6 attorneys' fees and the Lessor will be entitled to  
7 judgment for such an amount. Payment of the amount  
8 provided in this subparagraph shall constitute full  
9 performance of the Lessee's obligations under Paragraph  
10 3.3 of this Project Water Lease Agreement.

11 IN WITNESS WHEREOF the parties have executed this Project  
12 Water Lease Agreement on the date written above.

13 THE UNITED STATES OF AMERICA

14  
15 By \_\_\_\_\_

16 Attest:

17 THE SALT RIVER PIMA-MARICOPA  
18 INDIAN COMMUNITY

19 By \_\_\_\_\_  
20 Name: \_\_\_\_\_  
21 Title: \_\_\_\_\_

22 Attest:

23 CITY OF TEMPE, an Arizona  
24 municipal corporation

25 Helen R. Dowler  
26 City Clerk

Attest: Approved as to form:

C. Brad Wooten  
City Attorney

By

Harry E. Mitchell  
Name: Harry E. Mitchell  
Title: Mayor

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EXHIBIT "3.m.5"

City of Mesa - SRPMIC Project Water Lease Agreement

PROJECT WATER LEASE AGREEMENT

1. PREAMBLE

This Project Water Lease Agreement, made as of the 12th day of February, 1988, is between the United States of America (hereinafter "United States"), the Salt River Pima-Maricopa Indian Community (hereinafter "Lessor") and the City of Mesa, Arizona (hereinafter "Lessee"), witnesseth that:

2. EXPLANATORY RECITALS

WHEREAS, the parties to this Project Water Lease Agreement are also parties to the Salt River Pima-Maricopa Indian Community Water Settlement Agreement dated as of February 12, 1988 (the "SRPMIC Agreement");

WHEREAS, Paragraph 19.0 of the SRPMIC Agreement obligates the United States, the Lessor and the Lessee to enter into an agreement for the lease by the Lessor to the Lessee of Project Water to which the Lessor is entitled under the Central Arizona Project Indian Delivery Contract dated December 11, 1980 (the "CAP Delivery Contract"); and

WHEREAS, by the Act of October 20, 1988, 102 Stat. 2549 (the "Authorizing Legislation"), the United States confirmed the SRPMIC Agreement and specifically authorized the amendment of the CAP Delivery Contract and the lease of the Lessor's rights to Project Water to the Lessee; and

WHEREAS, pursuant to the SRPMIC Agreement and the Authorizing Legislation, the United States and the Lessor have executed a First . . .

1 Amendment to the CAP Delivery Contract which authorizes the Lessor  
2 to make this Project Water Lease Agreement;

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

6 3. LEASE OF PROJECT WATER

7 3.1 Subject of Lease. The Lessor leases to the Lessee the  
8 right to the delivery of 1,669 acre-feet per year of Project Water  
9 under the CAP Delivery Contract, subject to the terms and  
10 conditions of the CAP Delivery Contract except as modified herein.

11 3.2 Term of Lease. The term of this Project Water Lease  
12 Agreement shall commence on January 1, 2000, and end on December  
13 30, 2098.

14 3.3 Lessee's Payment for Lease. The consideration for this  
15 Project Water Lease Agreement is the payment by the Lessee to the  
16 Lessor of the sum of \$2,008,000, which amount is due and payable on  
17 the effective date of this Project Water Lease Agreement. In lieu  
18 of making payment in full upon the effective date of this Project  
19 Water Lease Agreement, the Lessee may elect to make payment in  
20 either of the following ways:

21 A. An initial down payment of \$1,004,000 on the effective  
22 date of this Project Water Lease Agreement, with four (4)  
23 annual payments, payable on the next four (4) anniversary  
24 dates of the effective date of this Project Water Lease  
25 Agreement, of \$251,000 each, together with interest on  
26 the unpaid balance at an annual rate determined as

1 follows: one percent (1%) over the net interest rate  
2 paid by the City of Phoenix on its Water Renewal  
3 Refunding Bonds, Series 1986, determined as of the  
4 effective date of this Project Water Lease Agreement.  
5 Interest accrued shall not be added to principal and  
6 shall not itself bear interest unless delinquent.

7 B. An initial payment of \$251,000 on the effective date of  
8 this Project Water Lease Agreement, with seven (7) annual  
9 payments payable on the next seven (7) anniversary dates  
10 of the effective date of this Project Water Lease  
11 Agreement of \$251,000 each, together with interest on the  
12 unpaid balance at an annual rate of one percent (1%) over  
13 the Valley National Bank Home Office prime rate  
14 determined as of the effective date of this Project Water  
15 Lease Agreement.

16 Interest under this subparagraph B shall be  
17 calculated as follows: If, for example, the Lessee  
18 elects to pay under this subparagraph B, and the Valley  
19 National Bank Home Office prime rate as of the effective  
20 date of this Lease is seven percent (7%), the second  
21 annual installment shall be in the principal amount of  
22 \$251,000 plus interest in the amount of \$140,560, for a  
23 total payment of \$391,560. The third annual installment  
24 shall be in the principal amount of \$251,000 plus  
25 interest in the amount of \$120,480, for a total payment  
26 of \$371,480.

1 Without any prepayment penalty, the Lessee may at any time  
2 elect to pay the balance in full together with interest on the  
3 unpaid balance to the date of such payment.

4 3.4 Operation, Maintenance and Replacement Costs. The Lessee  
5 shall pay the full amount of the water service charges for  
6 operation, maintenance and replacement costs for the Project Water  
7 to the United States or, if so directed by the Secretary, to the  
8 Central Arizona Water Conservation District ("CAWCD") in accordance  
9 with Article 5.1 of the Lessee's CAP M&I Water Service Subcontract,  
10 except that the Lessee's obligation to pay operation, maintenance  
11 and replacement charges shall not begin earlier than October 1,  
12 1998.

13 3.5 Other Charges or Payments. The Lessee shall not be  
14 obligated to pay water service capital charges or M&I subcontract  
15 charges or any other charges or payments for the Project Water  
16 other than as provided in Subparagraphs 3.3, 3.4, 3.5 and 3.12 of  
17 this Project Water Lease Agreement. The Lessee shall pay any  
18 charges or payments imposed against the Lessor with respect to the  
19 leased Project Water during the term of this Project Water Lease  
20 Agreement.

21 3.6 Delivery of Water. The United States or CAWCD shall  
22 deliver the Lessor's Project Water to the Lessee as further  
23 provided herein; however, neither the United States nor CAWCD shall  
24 be obligated to make such deliveries if, in the judgment of CAWCD  
25 or the Secretary, delivery or schedule of deliveries to the Lessee  
26 would limit deliveries of CAP water to other CAP subcontractors to

1 a degree greater than deliveries to the Lessor. The United States  
2 or CAWCD shall deliver water to the Lessee in accordance with water  
3 delivery schedules provided by the Lessee to the United States and  
4 CAWCD. The water ordering procedures contained in Article 4.4 of  
5 the Lessee's CAP M&I Water Service Subcontract shall apply to the  
6 Lessee's ordering of water under this Project Water Lease  
7 Agreement. In no event shall the United States or CAWCD be  
8 required to deliver to the Lessee from the Water Supply System in  
9 any one month a total amount of Project Water greater than eleven  
10 percent (11%) of the Lessee's maximum entitlement under this  
11 Project Water Lease Agreement; provided, however, that the United  
12 States or CAWCD may deliver a greater percentage in any month if  
13 such increased delivery is compatible with the overall delivery of  
14 Project Water to all CAP subcontractors as determined by the United  
15 States and CAWCD if the Lessee agrees to accept such increased  
16 deliveries.

17 3.6.1 Sharing the Shortages. In the event of a shortage  
18 resulting in the Lessor's share of Project Water under the CAP  
19 Delivery Contract falling below 13,300 acre feet in any year, such  
20 shortage shall be shared pro rata among the Arizona Cities of  
21 Glendale, Phoenix, Chandler, Mesa, Scottsdale, and Tempe and the  
22 Arizona Town of Gilbert in accordance with the percentages set  
23 forth in Paragraph 19.6 of the SRPMIC Agreement.

24 3.7 Use of Project Water Outside Reservation. The Lessee may  
25 use or deliver Project Water for use outside the boundaries of the  
26 . . .



1 reservation, but may not use or deliver Project Water for use  
2 outside of the boundaries of CAWCD.

3 3.8 Conditions Relating to Delivery and Use. Lessee shall  
4 have the right to use water received under this Project Water Lease  
5 Agreement for any purpose consistent with Arizona law, including  
6 ground water recharge as that term is defined in Contract  
7 No. 14-06-W-245 between the United States and CAWCD dated  
8 December 15, 1972, as amended on December 1, 1988, hereinafter  
9 referred to as the "Repayment Contract." Deliveries of Project  
10 Water to the Lessee and its use by the Lessee shall be subject to  
11 the Conditions Relating to Delivery and Use in Article 4.3 of the  
12 Lessee's CAP M&I Water Service Subcontract. During the term of  
13 this Project Water Lease Agreement, the following subarticles or  
14 articles of the Lessee's CAP M&I Water Service Subcontract shall  
15 apply to the Lessee and to the Lessee's use of water under this  
16 Project Water Lease Agreement: Subarticles 4.5(c), 4.5(d), and  
17 5.2(f); Articles 4.9, 4.10, 5.3, 5.4, 5.5, 6.4, 6.6, 6.9, 6.10,  
18 6.11, and 6.13. Lessee expressly approves and agrees to all the  
19 terms presently set out in the Repayment Contract, or as such terms  
20 may be hereafter amended, and agrees to be bound by the actions to  
21 be taken and the determinations to be made under that Repayment  
22 Contract, except as otherwise provided herein.

23 3.9 Secretarial Control of Return Flow. Project Water used  
24 by the Lessee pursuant to the provisions of this Project Water  
25 Lease Agreement shall be subject to the terms relating to the  
26 . . . .

1 Secretary's right to control return flow as provided in Article 4.8  
2 of the Lessee's CAP M&I Water Service Subcontract.

3 3.10 Points of Delivery. The Project Water to be delivered to  
4 the Lessee pursuant to the provisions of this Project Water Lease  
5 Agreement shall be delivered at turnouts to be constructed by the  
6 United States at such points on the Water Supply System as have  
7 been previously agreed upon by the Contracting Officer and the  
8 Lessee in accordance with the provisions of Article 4.5 of the  
9 Lessee's CAP M&I Water Service Subcontract.

10 3.11 Lessor's Covenants. The Lessor agrees:

11 (A) To observe and perform all obligations imposed on  
12 the Lessor under the CAP Delivery Contract which are not  
13 assumed by the Lessee so that the Lessee's rights and duties  
14 are not in any way impaired;

15 (B) Not to execute any other lease of the Lessor's right  
16 to the delivery of Project Water under the CAP Delivery  
17 Contract which would impair the Lessee's rights and duties  
18 hereunder;

19 (C) Not to alter or modify the terms of the CAP Delivery  
20 Contract, except as provided herein, in such a way as to  
21 impair the Lessee's rights hereunder or exercise any option  
22 required or permitted by the CAP Delivery Contract so as to  
23 interfere with or change the rights and obligations of the  
24 Lessee hereunder; and

25 (D) Not to terminate or cancel the CAP Delivery Contract  
26 or transfer, convey or permit a transfer or conveyance of the

1 Contract so as to cause a termination of, interference with,  
2 or modification of the rights and obligations under the CAP  
3 Delivery Contract.

4 3.12 Lessee Assignment. The Lessee may not transfer, assign  
5 or sublease all or any part of its interest in Project Water  
6 outside the boundaries of its existing or future service area  
7 without the prior written consent of the Lessor and the Secretary;  
8 Provided, That the Lessee shall not transfer, assign, or sublease  
9 all or any part of its interest in Project Water hereunder for an  
10 amount in excess of that which the Lessee is obligated to pay under  
11 this Project Water Lease Agreement without the prior written  
12 approval of CAWCD and the Secretary. If Project Water under this  
13 Project Water Lease Agreement is transferred, assigned or subleased  
14 by the Lessee for an amount in excess of that which the Lessee paid  
15 for such water under this Project Water Lease Agreement, the excess  
16 amount shall be paid forthwith by the Lessee to the CAWCD for  
17 application against CAWCD's repayment obligation to the United  
18 States; Provided, however, That the Lessee shall be entitled to  
19 recover actual costs of transportation, treatment, and  
20 distribution, including but not limited to capital costs and OM&R  
21 costs. The Lessee shall not transfer, assign or sublease all or  
22 any part of its interest in Project Water if such transfer,  
23 assignment or sublease will adversely affect the Lessor without the  
24 prior written approval of Lessor. Lessee shall provide to CAWCD  
25 and the United States copies of any agreement transferring,  
26 assigning or subleasing all or any portion of Lessee's entitlement

1 under this Project Water Lease Agreement. Approval is hereby  
2 granted by the Secretary and the Lessor to the Lessee for the  
3 transfer, assignment or sublease of all or any part of its interest  
4 in Project Water under this Project Water Lease Agreement to the  
5 Arizona Cities of Phoenix, Glendale, Chandler, Scottsdale and  
6 Tempe, and the Arizona Town of Gilbert, or to its successor(s) in  
7 interest within the boundaries of its existing or future service  
8 area. Such approval shall be effective only upon the agreement by  
9 such transferee, assignee, or sublessee to pay all applicable water  
10 service charges associated with the delivery of Project Water, and  
11 otherwise to abide by all terms and conditions of this Project  
12 Water Lease Agreement.

13 3.13 CAWCD Repayment. For the purpose of determining the  
14 allocation and repayment of costs of the CAP as provided in Article  
15 9.3 of Contract No. 14-06-W-245 between the United States and CAWCD  
16 dated December 15, 1972, and any amendment or revision thereof, the  
17 costs associated with the delivery of water pursuant to this Water  
18 Project Lease Agreement shall be nonreimbursable, and such costs  
19 shall be excluded from CAWCD's repayment obligation.

20 4. GENERAL PROVISIONS

21 4.1 United States Consent to Lease. The United States hereby  
22 approves and consents to this Project Water Lease Agreement.

23 4.2 Effective Date. This Project Water Lease Agreement shall  
24 become effective on the enforceability date of the SRPMIC Agreement  
25 as set forth in Paragraph 21.6 thereof.

26 . . .

1       4.3 Effect of SRPMIC Agreement. On the enforceability date  
2 of the SRPMIC Agreement, this Project Water Lease Agreement shall  
3 be effective and enforceable between the Lessor and the Lessee  
4 notwithstanding the performance or non-performance of other  
5 provisions of the SRPMIC Agreement not related to this Project  
6 Water Lease Agreement. The provisions of the SRPMIC Agreement that  
7 are related to this Project Water Lease Agreement are set forth in  
8 Paragraph 19.0 of the SRPMIC Agreement.

9       4.4 Invalidity of Agreement. If the Lessee's entitlement to  
10 Project Water under this Project Water Lease Agreement is  
11 determined to be invalid by a final judgment entered over the  
12 objection of the Lessee with the result that the Lessor reacquires  
13 the right to receive the Project Water, then the Lessor shall  
14 refund to the Lessee that portion of the lease payment that the  
15 number of years remaining in the lease term at the time of such  
16 determination bears to the total lease term.

17       4.5 Curing for Lessee's Nonpayment. If the initial payment  
18 is not made on or before the date such payment is due, or if any  
19 successive lease payment is not made on the date such payment is  
20 due, the Lessee shall be in default and the Lessor shall give  
21 written notice of default to the defaulting Lessee. The Lessor  
22 shall also send a copy of the notice of default to each other party  
23 to the SRPMIC Agreement which has entered into a Project Water  
24 Lease Agreement for the lease of the Lessor's Project Water ("Other  
25 Cities"). Notice shall be given in the manner and to the city  
26 officers specified in Paragraph 21.17 of the SRPMIC Agreement. The

1 notice of default shall specifically describe the default and state  
2 the amount due by such Lessee ("Default Amount"). After notice of  
3 default, the rights of the Lessee, the Lessor and the Other Cities  
4 shall be as follows:

5       A. During the first thirty (30) days following the notice of  
6       default ("First Grace Period"), the defaulting Lessee  
7       shall have the exclusive right to cure any such default  
8       by tendering the Default Amount to the Lessor together  
9       with interest on the Default Amount accrued at the annual  
10      rate of ten percent (10%) calculated from the due date.  
11      During the First Grace Period, the defaulting Lessee may  
12      cure only by tendering the Default Amount.

13      B. In the event that the defaulting Lessee has not cured  
14      within thirty (30) days following the notice of default,  
15      the Lessee, any of the Other Cities, and/or any  
16      combination thereof, may thereafter, but within sixty  
17      (60) days following the notice of default ("Second Grace  
18      Period"), cure the default by tendering the Default  
19      Amount to the Lessor together with interest on the  
20      Default Amount accrued at the annual rate of ten percent  
21      (10%) calculated from the due date. Each curing city or  
22      town shall succeed to the interest of the defaulting  
23      Lessee to the extent of its contribution. A cure  
24      effected pursuant to this section shall constitute full  
25      performance of such payment obligation.

26 . . . .

1 C. After notice of default and after failure to cure as  
2 provided for in Paragraphs 4.5.A. and B. hereof, the  
3 defaulting Lessee will be indebted to the Lessor in the  
4 amount of \$2,008,000 less principal payments made before  
5 the default together with interest, costs and reasonable  
6 attorneys' fees and the Lessor will be entitled to  
7 judgment for such an amount. Payment of the amount  
8 provided in this subparagraph shall constitute full  
9 performance of the Lessee's obligations under Paragraph  
10 3.3 of this Project Water Lease Agreement.

11 IN WITNESS WHEREOF the parties have executed this Project  
12 Water Lease Agreement on the date written above.

13 THE UNITED STATES OF AMERICA

14  
15 By Wilson Barber  
16 Bureau of Indian Affairs

By [Signature]  
Bureau of Reclamation

17 Attest:

THE SALT RIVER PIMA-MARICOPA  
INDIAN COMMUNITY

18 [Signature]

19 By [Signature]  
20 Name: Gerald Anton  
21 Title: President

22 Attest:

CITY OF MESA, an Arizona  
municipal corporation

23 City Clerk

24 Attest:

25 By \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

26

1 C. After notice of default and after failure to cure as  
2 provided for in Paragraphs 4.5.A. and B. hereof, the  
3 defaulting Lessee will be indebted to the Lessor in the  
4 amount of \$2,008,000 less principal payments made before  
5 the default together with interest, costs and reasonable  
6 attorneys' fees and the Lessor will be entitled to  
7 judgment for such an amount. Payment of the amount  
8 provided in this subparagraph shall constitute full  
9 performance of the Lessee's obligations under Paragraph  
10 3.3 of this Project Water Lease Agreement.

11 IN WITNESS WHEREOF the parties have executed this Project  
12 Water Lease Agreement on the date written above.

13 THE UNITED STATES OF AMERICA

14  
15 By \_\_\_\_\_

16 Attest:

17 THE SALT RIVER PIMA-MARICOPA  
18 INDIAN COMMUNITY

19 By \_\_\_\_\_

20 Name: \_\_\_\_\_

21 Title: \_\_\_\_\_

22 Attest:

23 CITY OF MESA, an Arizona  
24 municipal corporation

25 Neal Butts  
26 City Attorney

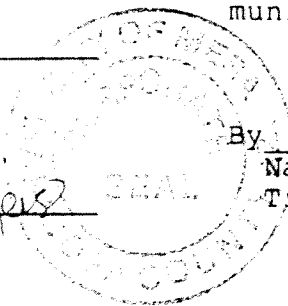
Attest:

By C. K. Luster

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Shawn Eggers  
City Clerk





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EXHIBIT "3.m.6"

13

City of Phoenix - SRPMIC Project Water Lease Agreement

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PROJECT WATER LEASE AGREEMENT

1. PREAMBLE

This Project Water Lease Agreement, made as of the 12th day of February, 1988, is between the United States of America (hereinafter "United States"), the Salt River Pima-Maricopa Indian Community (hereinafter "Lessor") and the City of Phoenix, Arizona (hereinafter "Lessee"), witnesseth that:

2. EXPLANATORY RECITALS

WHEREAS, the parties to this Project Water Lease Agreement are also parties to the Salt River Pima-Maricopa Indian Community Water Settlement Agreement dated as of February 12, 1988 (the "SRPMIC Agreement");

WHEREAS, Paragraph 19.0 of the SRPMIC Agreement obligates the United States, the Lessor and the Lessee to enter into an agreement for the lease by the Lessor to the Lessee of Project Water to which the Lessor is entitled under the Central Arizona Project Indian Delivery Contract dated December 11, 1980 (the "CAP Delivery Contract"); and

WHEREAS, by the Act of October 20, 1988, 102 Stat. 2549 (the "Authorizing Legislation"), the United States confirmed the SRPMIC Agreement and specifically authorized the amendment of the CAP Delivery Contract and the lease of the Lessor's rights to Project Water to the Lessee; and

WHEREAS, pursuant to the SRPMIC Agreement and the Authorizing Legislation, the United States and the Lessor have executed a First

. . .

1 Amendment to the CAP Delivery Contract which authorizes the Lessor  
2 to make this Project Water Lease Agreement;

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

6 3. LEASE OF PROJECT WATER

7 3.1 Subject of Lease. The Lessor leases to the Lessee the  
8 right to the delivery of 3,023 acre-feet per year of Project Water  
9 under the CAP Delivery Contract, subject to the terms and  
10 conditions of the CAP Delivery Contract except as modified herein.

11 3.2 Term of Lease. The term of this Project Water Lease  
12 Agreement shall commence on January 1, 2000, and end on  
13 December 30, 2098.

14 3.3 Lessee's Payment for Lease. The consideration for this  
15 Project Water Lease Agreement is the payment by the Lessee to the  
16 Lessor of the sum of \$3,636,800, which amount is due and payable on  
17 the effective date of this Project Water Lease Agreement. In lieu  
18 of making payment in full upon the effective date of this Project  
19 Water Lease Agreement, the Lessee may elect to make payment in  
20 either of the following ways:

21 A. An initial down payment of \$1,818,400 on the effective  
22 date of this Project Water Lease Agreement, with four (4)  
23 annual payments, payable on the next four (4) anniversary  
24 dates of the effective date of this Project Water Lease  
25 Agreement, of \$454,600 each, together with interest on  
26 the unpaid balance at an annual rate determined as

1 follows: one percent (1%) over the net interest rate  
2 paid by the City of Phoenix on its Water Renewal  
3 Refunding Bonds, Series 1986, determined as of the  
4 effective date of this Project Water Lease Agreement.  
5 Interest accrued shall not be added to principal and  
6 shall not itself bear interest unless delinquent.

7 B. An initial payment of \$454,600 on the effective date of  
8 this Project Water Lease Agreement, with seven (7) annual  
9 payments payable on the next seven (7) anniversary dates  
10 of the effective date of this Project Water Lease  
11 Agreement of \$454,600 each, together with interest on the  
12 unpaid balance at an annual rate of one percent (1%) over  
13 the Valley National Bank Home Office prime rate  
14 determined as of the effective date of this Project Water  
15 Lease Agreement.

16 Interest under this subparagraph B shall be  
17 calculated as follows: If, for example, the Lessee  
18 elects to pay under this subparagraph B, and the Valley  
19 National Bank Home Office prime rate as of the effective  
20 date of this Lease is seven percent (7%), the second  
21 annual installment shall be in the principal amount of  
22 \$454,600 plus interest in the amount of \$254,576, for a  
23 total payment of \$709,176. The third annual installment  
24 shall be in the principal amount of \$454,600 plus  
25 interest in the amount of \$218,208, for a total payment  
26 of \$672,808.

1 Without any prepayment penalty, the Lessee may at any time  
2 elect to pay the balance in full together with interest on the  
3 unpaid balance to the date of such payment.

4 3.4 Operation, Maintenance and Replacement Costs. The Lessee  
5 shall pay the full amount of the water service charges for  
6 operation, maintenance and replacement costs for the Project Water  
7 to the United States or, if so directed by the Secretary, to the  
8 Central Arizona Water Conservation District ("CAWCD") in accordance  
9 with Article 5.1 of the Lessee's CAP M&I Water Service Subcontract,  
10 except that the Lessee's obligation to pay operation, maintenance  
11 and replacement charges shall not begin earlier than October 1,  
12 1998.

13 3.5 Other Charges or Payments. The Lessee shall not be  
14 obligated to pay water service capital charges or M&I subcontract  
15 charges or any other charges or payments for the Project Water  
16 other than as provided in Subparagraphs 3.3, 3.4, 3.5 and 3.12 of  
17 this Project Water Lease Agreement. The Lessee shall pay any  
18 charges or payments imposed against the Lessor with respect to the  
19 leased Project Water during the term of this Project Water Lease  
20 Agreement.

21 3.6 Delivery of Water. The United States or CAWCD shall  
22 deliver the Lessor's Project Water to the Lessee as further  
23 provided herein; however, neither the United States nor CAWCD shall  
24 be obligated to make such deliveries if, in the judgment of CAWCD  
25 or the Secretary, delivery or schedule of deliveries to the Lessee  
26 would limit deliveries of CAP water to other CAP subcontractors to

1 a degree greater than deliveries to the Lessor. The United States  
2 or CAWCD shall deliver water to the Lessee in accordance with water  
3 delivery schedules provided by the Lessee to the United States and  
4 CAWCD. The water ordering procedures contained in Article 4.4 of  
5 the Lessee's CAP M&I Water Service Subcontract shall apply to the  
6 Lessee's ordering of water under this Project Water Lease  
7 Agreement. In no event shall the United States or CAWCD be  
8 required to deliver to the Lessee from the Water Supply System in  
9 any one month a total amount of Project Water greater than eleven  
10 percent (11%) of the Lessee's maximum entitlement under this  
11 Project Water Lease Agreement; provided, however, that the United  
12 States or CAWCD may deliver a greater percentage in any month if  
13 such increased delivery is compatible with the overall delivery of  
14 Project Water to all CAP subcontractors as determined by the United  
15 States and CAWCD if the Lessee agrees to accept such increased  
16 deliveries.

17 3.6.1 Sharing of Shortages. In the event of a shortage  
18 resulting in the Lessor's share of Project Water under the CAP  
19 Delivery Contract falling below 13,300 acre feet in any year, such  
20 shortage shall be shared pro rata among the Arizona Cities of  
21 Glendale, Phoenix, Chandler, Mesa, Scottsdale, and Tempe and the  
22 Arizona Town of Gilbert in accordance with the percentages set  
23 forth in Paragraph 19.6 of the SRPMIC Agreement.

24 3.7 Use of Project Water Outside Reservation. The Lessee may  
25 use or deliver Project Water for use outside the boundaries of the  
26 . . .

1 reservation, but may not use or deliver Project Water for use  
2 outside of the boundaries of CAWCD.

3       3.8 Conditions Relating to Delivery and Use. Lessee shall  
4 have the right to use water received under this Project Water Lease  
5 Agreement for any purpose consistent with Arizona law, including  
6 ground water recharge as that term is defined in Contract  
7 No. 14-06-W-245 between the United States and CAWCD dated  
8 December 15, 1972, as amended on December 1, 1988, hereinafter  
9 referred to as the "Repayment Contract." Deliveries of Project  
10 Water to the Lessee and its use by the Lessee shall be subject to  
11 the Conditions Relating to Delivery and Use in Article 4.3 of the  
12 Lessee's CAP M&I Water Service Subcontract. During the term of  
13 this Project Water Lease Agreement, the following subarticles or  
14 articles of the Lessee's CAP M&I Water Service Subcontract shall  
15 apply to the Lessee and to the Lessee's use of water under this  
16 Project Water Lease Agreement: Subarticles 4.5(c), 4.5(d), and  
17 5.2(f); Articles 4.9, 4.10, 5.3, 5.4, 5.5, 6.4, 6.6, 6.9, 6.10,  
18 6.11, and 6.13. Lessee expressly approves and agrees to all the  
19 terms presently set out in the Repayment Contract, or as such terms  
20 may be hereafter amended, and agrees to be bound by the actions to  
21 be taken and the determinations to be made under that Repayment  
22 Contract, except as otherwise provided herein.

23       3.9 Secretarial Control of Return Flow. Project Water used by  
24 the Lessee pursuant to the provisions of this Project Water Lease  
25 Agreement shall be subject to the terms relating to the Secretary's  
26 . . .

1 right to control return flow as provided in Article 4.8 of the  
2 Lessee's CAP M&I Water Service Subcontract.

3 3.10 Points of Delivery. The Project Water to be delivered to  
4 the Lessee pursuant to the provisions of this Project Water Lease  
5 Agreement shall be delivered at turnouts to be constructed by the  
6 United States at such points on the Water Supply System as have  
7 been previously agreed upon by the Contracting Officer and the  
8 Lessee in accordance with the provisions of Article 4.5 of the  
9 Lessee's CAP M&I Water Service Subcontract.

10 3.11 Lessor's Covenants. The Lessor agrees:

11 (A) To observe and perform all obligations imposed on the  
12 Lessor under the CAP Delivery Contract which are not assumed  
13 by the Lessee so that the Lessee's rights and duties are not  
14 in any way impaired;

15 (B) Not to execute any other lease of the Lessor's right  
16 to the delivery of Project Water under the CAP Delivery  
17 Contract which would impair the Lessee's rights and duties  
18 hereunder;

19 (C) Not to alter or modify the terms of the CAP Delivery  
20 Contract, except as provided herein, in such a way as to  
21 impair the Lessee's rights hereunder or exercise any option  
22 required or permitted by the CAP Delivery Contract so as to  
23 interfere with or change the rights and obligations of the  
24 Lessee hereunder; and

25 (D) Not to terminate or cancel the CAP Delivery Contract  
26 or transfer, convey or permit a transfer or conveyance of the



1 Contract so as to cause a termination of, interference with,  
2 or modification of the rights and obligations under the CAP  
3 Delivery Contract.

4 3.12 Lessee Assignment. The Lessee may not transfer, assign  
5 or sublease all or any part of its interest in Project Water  
6 outside the boundaries of its existing or future service area  
7 without the prior written consent of the Lessor and the Secretary;  
8 Provided, That the Lessee shall not transfer, assign, or sublease  
9 all or any part of its interest in Project Water hereunder for an  
10 amount in excess of that which the Lessee is obligated to pay under  
11 this Project Water Lease Agreement without the additional prior  
12 written approval of CAWCD and the Secretary. If Project Water  
13 under this Project Water Lease Agreement is transferred, assigned  
14 or subleased by the Lessee for an amount in excess of that which  
15 the Lessee paid for such water under this Project Water Lease  
16 Agreement, the excess amount shall be paid forthwith by the Lessee  
17 to the CAWCD for application against CAWCD's repayment obligation  
18 to the United States; Provided, however, That the Lessee shall be  
19 entitled to recover actual costs of transportation, treatment, and  
20 distribution, including but not limited to capital costs and OM&R  
21 costs. The Lessee shall not transfer, assign or sublease all or  
22 any part of its interest in Project Water if such transfer,  
23 assignment or sublease will adversely affect the Lessor without the  
24 prior written approval of Lessor. Lessee shall provide to CAWCD  
25 and the United States copies of any agreement transferring,  
26 assigning or subleasing all or any portion of Lessee's entitlement

1 under this Project Water Lease Agreement. Approval is hereby  
2 granted by the Secretary and the Lessor to the Lessee for the  
3 transfer, assignment or sublease of all or any part of its interest  
4 in Project Water under this Project Water Lease Agreement to the  
5 Arizona Cities of Chandler, Glendale, Mesa, Scottsdale and Tempe,  
6 and the Arizona Town of Gilbert, or to its successor(s) in interest  
7 within the boundaries of its existing or future service area. Such  
8 approval shall be effective only upon the agreement by such  
9 transferee, assignee, or sublessee to pay all applicable water  
10 service charges associated with the delivery of Project Water, and  
11 otherwise to abide by all terms and conditions of this Project  
12 Water Lease Agreement.

13 3.13 CAWCD Repayment. For the purpose of determining the  
14 allocation and repayment of costs of the CAP as provided in Article  
15 9.3 of Contract No. 14-06-W-245 between the United States and CAWCD  
16 dated December 15, 1972, and any amendment or revision thereof, the  
17 costs associated with the delivery of water pursuant to this Water  
18 Project Lease Agreement shall be nonreimbursable, and such costs  
19 shall be excluded from CAWCD's repayment obligation.

20 4. GENERAL PROVISIONS

21 4.1 United States Consent to Lease. The United States hereby  
22 approves and consents to this Project Water Lease Agreement.

23 4.2 Effective Date. This Project Water Lease Agreement shall  
24 become effective on the enforceability date of the SRPMIC Agreement  
25 as set forth in Paragraph 21.6 thereof.

26 . . . .

1       4.3 Effect of SRPMIC Agreement. On the enforceability date of  
2 the SRPMIC Agreement, this Project Water Lease Agreement shall be  
3 effective and enforceable between the Lessor and the Lessee  
4 notwithstanding the performance or non-performance of other  
5 provisions of the SRPMIC Agreement not related to this Project  
6 Water Lease Agreement. The provisions of the SRPMIC Agreement that  
7 are related to this Project Water Lease Agreement are set forth in  
8 Paragraph 19.0 of the SRPMIC Agreement.

9       4.4 Invalidity of Agreement. If the Lessee's entitlement to  
10 Project Water under this Project Water Lease Agreement is  
11 determined to be invalid by a final judgment entered over the  
12 objection of the Lessee with the result that the Lessor reacquires  
13 the right to receive the Project Water, then the Lessor shall  
14 refund to the Lessee that portion of the lease payment that the  
15 number of years remaining in the lease term at the time of such  
16 determination bears to the total lease term.

17       4.5 Curing for Lessee's Nonpayment. If the initial payment is  
18 not made on or before the date such payment is due, or if any  
19 successive lease payment is not made on the date such payment is  
20 due, the Lessee shall be in default and the Lessor shall give  
21 written notice of default to the defaulting Lessee. The Lessor  
22 shall also send a copy of the notice of default to each other party  
23 to the SRPMIC Agreement which has entered into a Project Water  
24 Lease Agreement for the lease of the Lessor's Project Water ("Other  
25 Cities"). Notice shall be given in the manner and to the city  
26 officers specified in Paragraph 21.17 of the SRPMIC Agreement. The

1 notice of default shall specifically describe the default and state  
2 the amount due by such Lessee ("Default Amount"). After notice of  
3 default, the rights of the Lessee, the Lessor and the Other Cities  
4 shall be as follows:

5       A. During the first thirty (30) days following the notice of  
6       default ("First Grace Period"), the defaulting Lessee  
7       shall have the exclusive right to cure any such default  
8       by tendering the Default Amount to the Lessor together  
9       with interest on the Default Amount accrued at the annual  
10      rate of ten percent (10%) calculated from the due date.  
11      During the First Grace Period, the defaulting Lessee may  
12      cure only by tendering the Default Amount.

13      B. In the event that the defaulting Lessee has not cured  
14      within thirty (30) days following the notice of default,  
15      the Lessee, any of the Other Cities, and/or any  
16      combination thereof, may thereafter, but within sixty  
17      (60) days following the notice of default ("Second Grace  
18      Period"), cure the default by tendering the Default  
19      Amount to the Lessor together with interest on the  
20      Default Amount accrued at the annual rate of ten percent  
21      (10%) calculated from the due date. Each curing city or  
22      town shall succeed to the interest of the defaulting  
23      Lessee to the extent of its contribution. A cure  
24      effected pursuant to this section shall constitute full  
25      performance of such payment obligation.

26 . . .

C. After notice of default and after failure to cure as provided for in Paragraphs 4.5.A. and B. hereof, the defaulting Lessee will be indebted to the Lessor in the amount of \$3,636,800 less principal payments made before the default together with interest, costs and reasonable attorneys' fees and the Lessor will be entitled to judgment for such an amount. Payment of the amount provided in this subparagraph shall constitute full performance of the Lessee's obligations under Paragraph 3.3 of this Project Water Lease Agreement.

IN WITNESS WHEREOF the parties have executed this Project Water Lease Agreement on the date written above.

THE UNITED STATES OF AMERICA

By Wilson Barber  
Bureau of Indian Affairs

Attest:

Laura L. Jim

Attest:

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

Attest:

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

By WETA  
Bureau of Reclamation  
THE SALT RIVER PIMA-MARICOPA  
INDIAN COMMUNITY

By Steve Cook  
Name: Gerald Anton  
Title: President

CITY OF PHOENIX, MARVIN A. ANDREWS,  
City Manager

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

C. After notice of default and after failure to cure as provided for in Paragraphs 4.5.A. and B. hereof, the defaulting Lessee will be indebted to the Lessor in the amount of \$3,636,800 less principal payments made before the default together with interest, costs and reasonable attorneys' fees and the Lessor will be entitled to judgment for such an amount. Payment of the amount provided in this subparagraph shall constitute full performance of the Lessee's obligations under Paragraph 3.3 of this Project Water Lease Agreement.

IN WITNESS WHEREOF the parties have executed this Project Water Lease Agreement on the date written above.

THE UNITED STATES OF AMERICA

By \_\_\_\_\_

Attest:

THE SALT RIVER PIMA-MARICOPA  
INDIAN COMMUNITY

By \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Attest:

CITY OF PHOENIX, a Municipal  
corporation, MARVIN A. ANDREWS,  
City Manager

*Victor M. [Signature]*  
City Clerk

By: *[Signature]*

Approved as to Form:

*[Signature]*  
City Attorney

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EXHIBIT "3.m.7"

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Town of Gilbert - SRPMIC Project Water Lease Agreement

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PROJECT WATER LEASE AGREEMENT

1. PREAMBLE

This Project Water Lease Agreement, made as of the 12th day of February, 1988, is between the United States of America (hereinafter "United States"), the Salt River Pima-Maricopa Indian Community (hereinafter "Lessor") and the Town of Gilbert, Arizona (hereinafter "Lessee"), witnesseth that:

2. EXPLANATORY RECITALS

WHEREAS, the parties to this Project Water Lease Agreement are also parties to the Salt River Pima-Maricopa Indian Community Water Settlement Agreement dated as of February 12, 1988 (the "SRPMIC Agreement");

WHEREAS, Paragraph 19.0 of the SRPMIC Agreement obligates the United States, the Lessor and the Lessee to enter into an agreement for the lease by the Lessor to the Lessee of Project Water to which the Lessor is entitled under the Central Arizona Project Indian Delivery Contract dated December 11, 1980 (the "CAP Delivery Contract"); and

WHEREAS, by the Act of October 20, 1988, 102 Stat. 2549 (the "Authorizing Legislation"), the United States confirmed the SRPMIC Agreement and specifically authorized the amendment of the CAP Delivery Contract and the lease of the Lessor's rights to Project Water to the Lessee; and

WHEREAS, pursuant to the SRPMIC Agreement and the Authorizing Legislation, the United States and the Lessor have executed a First

. . .



1 Amendment to the CAP Delivery Contract which authorizes the Lessor  
2 to make this Project Water Lease Agreement;

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

6 3. LEASE OF PROJECT WATER

7 3.1 Subject of Lease. The Lessor leases to the Lessee the  
8 right to the delivery of 4,088 acre-feet per year of Project Water  
9 under the CAP Delivery Contract, subject to the terms and  
10 conditions of the CAP Delivery Contract except as modified herein.

11 3.2 Term of Lease. The term of this Project Water Lease  
12 Agreement shall commence on January 1, 2000, and end on  
13 December 30, 2098.

14 3.3 Lessee's Payment for Lease. The consideration for this  
15 Project Water Lease Agreement is the payment by the Lessee to the  
16 Lessor of the sum of \$4,916,800, which amount is due and payable on  
17 the effective date of this Project Water Lease Agreement. In lieu  
18 of making payment in full upon the effective date of this Project  
19 Water Lease Agreement, the Lessee may elect to make payment in  
20 either of the following ways:

21 A. An initial down payment of \$2,458,400 on the effective  
22 date of this Project Water Lease Agreement, with four (4)  
23 annual payments, payable on the next four (4) anniversary  
24 dates of the effective date of this Project Water Lease  
25 Agreement, of \$614,600 each, together with interest on  
26 the unpaid balance at an annual rate determined as

1 follows: one percent (1%) over the net interest rate  
2 paid by the City of Phoenix on its Water Renewal  
3 Refunding Bonds, Series 1986, determined as of the  
4 effective date of this Project Water Lease Agreement.  
5 Interest accrued shall not be added to principal and  
6 shall not itself bear interest unless delinquent.

7 B. An initial payment of \$614,600 on the effective date of  
8 this Project Water Lease Agreement, with seven (7) annual  
9 payments payable on the next seven (7) anniversary dates  
10 of the effective date of this Project Water Lease  
11 Agreement of \$614,600 each, together with interest on the  
12 unpaid balance at an annual rate of one percent (1%) over  
13 the Valley National Bank Home Office prime rate  
14 determined as of the effective date of this Project Water  
15 Lease Agreement.

16 Interest under this subparagraph B shall be  
17 calculated as follows: If, for example, the Lessee  
18 elects to pay under this subparagraph B, and the Valley  
19 National Bank Home Office prime rate as of the effective  
20 date of this Lease is seven percent (7%), the second  
21 annual installment shall be in the principal amount of  
22 \$614,600 plus interest in the amount of \$344,716, for a  
23 total payment of \$958,776. The third annual installment  
24 shall be in the principal amount of \$614,600 plus  
25 interest in the amount of \$295,008, for a total payment  
26 of \$909,608.

1 Without any prepayment penalty, the Lessee may at any time  
2 elect to pay the balance in full together with interest on the  
3 unpaid balance to the date of such payment.

4 3.4 Operation, Maintenance and Replacement Costs. The Lessee  
5 shall pay the full amount of the water service charges for  
6 operation, maintenance and replacement costs for the Project Water  
7 to the United States or, if so directed by the Secretary, to the  
8 Central Arizona Water Conservation District ("CAWCD") in accordance  
9 with Article 5.1 of the Lessee's CAP M&I Water Service Subcontract,  
10 except that the Lessee's obligation to pay operation, maintenance  
11 and replacement charges shall not begin earlier than October 1,  
12 1998.

13 3.5 Other Charges or Payments. The Lessee shall not be  
14 obligated to pay water service capital charges or M&I subcontract  
15 charges or any other charges or payments for the Project Water  
16 other than as provided in Subparagraphs 3.3, 3.4, 3.5 and 3.12 of  
17 this Project Water Lease Agreement. The Lessee shall pay any  
18 charges or payments imposed against the Lessor with respect to the  
19 leased Project Water during the term of this Project Water Lease  
20 Agreement.

21 3.6 Delivery of Water. The United States or CAWCD shall  
22 deliver the Lessor's Project Water to the Lessee as further  
23 provided herein; however, neither the United States nor CAWCD shall  
24 be obligated to make such deliveries if, in the judgment of CAWCD  
25 or the Secretary, delivery or schedule of deliveries to the Lessee  
26 would limit deliveries of CAP water to other CAP subcontractors to

1 a degree greater than deliveries to the Lessor. The United States  
2 or CAWCD shall deliver water to the Lessee in accordance with water  
3 delivery schedules provided by the Lessee to the United States and  
4 CAWCD. The water ordering procedures contained in Article 4.4 of  
5 the Lessee's CAP M&I Water Service Subcontract shall apply to the  
6 Lessee's ordering of water under this Project Water Lease  
7 Agreement. In no event shall the United States or CAWCD be  
8 required to deliver to the Lessee from the Water Supply System in  
9 any one month a total amount of Project Water greater than eleven  
10 percent (11%) of the Lessee's maximum entitlement under this  
11 Project Water Lease Agreement; provided, however, that the United  
12 States or CAWCD may deliver a greater percentage in any month if  
13 such increased delivery is compatible with the overall delivery of  
14 Project Water to all CAP subcontractors as determined by the United  
15 States and CAWCD if the Lessee agrees to accept such increased  
16 deliveries.

17 3.6.1 Sharing of Shortages. In the event of a shortage  
18 resulting in the Lessor's share of Project Water under the CAP  
19 Delivery Contract falling below 13,300 acre feet in any year, such  
20 shortage shall be shared pro rata among the Arizona Cities of  
21 Glendale, Phoenix, Chandler, Mesa, Scottsdale, and Tempe and the  
22 Arizona Town of Gilbert in accordance with the percentages set  
23 forth in Paragraph 19.6 of the SRPMIC Agreement.

24 3.7 Use of Project Water Outside Reservation. The Lessee may  
25 use or deliver Project Water for use outside the boundaries of the  
26 . . .

1 reservation, but may not use or deliver Project Water for use  
2 outside of the boundaries of CAWCD.

3       3.8 Conditions Relating to Delivery and Use. Lessee shall  
4 have the right to use water received under this Project Water Lease  
5 Agreement for any purpose consistent with Arizona law, including  
6 ground water recharge as that term is defined in Contract  
7 No. 14-06-W-245 between the United States and CAWCD dated  
8 December 15, 1972, as amended on December 1, 1988, hereinafter  
9 referred to as the "Repayment Contract." Deliveries of Project  
10 Water to the Lessee and its use by the Lessee shall be subject to  
11 the Conditions Relating to Delivery and Use in Article 4.3 of the  
12 Lessee's CAP M&I Water Service Subcontract. During the term of  
13 this Project Water Lease Agreement, the following subarticles or  
14 articles of the Lessee's CAP M&I Water Service Subcontract shall  
15 apply to the Lessee and to the Lessee's use of water under this  
16 Project Water Lease Agreement: Subarticles 4.5(c), 4.5(d), and  
17 5.2(f); Articles 4.9, 4.10, 5.3, 5.4, 5.5, 6.4, 6.6, 6.9, 6.10,  
18 6.11, and 6.13. Lessee expressly approves and agrees to all the  
19 terms presently set out in the Repayment Contract, or as such terms  
20 may be hereafter amended, and agrees to be bound by the actions to  
21 be taken and the determinations to be made under that Repayment  
22 Contract, except as otherwise provided herein.

23       3.9 Secretarial Control of Return Flow. Project Water used  
24 by the Lessee pursuant to the provisions of this Project Water  
25 Lease Agreement shall be subject to the terms relating to the  
26 . . . .

1 Secretary's right to control return flow as provided in Article 4.8  
2 of the Lessee's CAP M&I Water Service Subcontract.

3 3.10 Points of Delivery. The Project Water to be delivered to  
4 the Lessee pursuant to the provisions of this Project Water Lease  
5 Agreement shall be delivered at turnouts to be constructed by the  
6 United States at such points on the Water Supply System as have  
7 been previously agreed upon by the Contracting Officer and the  
8 Lessee in accordance with the provisions of Article 4.5 of the  
9 Lessee's CAP M&I Water Service Subcontract.

10 3.11 Lessor's Covenants. The Lessor agrees:

- 11 A. To observe and perform all obligations imposed on the  
12 Lessor under the CAP Delivery Contract which are not  
13 assumed by the Lessee so that the Lessee's rights and  
14 duties are not in any way impaired;
- 15 B. Not to execute any other lease of the Lessor's right to  
16 the delivery of Project Water under the CAP Delivery  
17 Contract which would impair the Lessee's rights and  
18 duties hereunder;
- 19 C. Not to alter or modify the terms of the CAP Delivery  
20 Contract, except as provided herein, in such a way as to  
21 impair the Lessee's rights hereunder or exercise any  
22 option required or permitted by the CAP Delivery Contract  
23 so as to interfere with or change the rights and  
24 obligations of the Lessee hereunder; and
- 25 D. Not to terminate or cancel the CAP Delivery Contract or  
26 transfer, convey or permit a transfer or conveyance of

1           the Contract so as to cause a termination of,  
2           interference with, or modification of the rights and  
3           obligations under the CAP Delivery Contract.

4           3.12 Lessee Assignment. The Lessee may not transfer, assign  
5           or sublease all or any part of its interest in Project Water  
6           outside the boundaries of its existing or future service area  
7           without the prior written consent of the Lessor and the Secretary;  
8           Provided, That the Lessee shall not transfer, assign, or sublease  
9           all or any part of its interest in Project Water hereunder for an  
10          amount in excess of that which the Lessee is obligated to pay under  
11          this Project Water Lease Agreement without the additional prior  
12          written approval of CAWCD and the Secretary. If Project Water  
13          under this Project Water Lease Agreement is transferred, assigned  
14          or subleased by the Lessee for an amount in excess of that which  
15          the Lessee paid for such water under this Project Water Lease  
16          Agreement, the excess amount shall be paid forthwith by the Lessee  
17          to the CAWCD for application against CAWCD's repayment obligation  
18          to the United States; Provided, however, That the Lessee shall be  
19          entitled to recover actual costs of transportation, treatment, and  
20          distribution, including but not limited to capital costs and OM&R  
21          costs. The Lessee shall not transfer, assign or sublease all or  
22          any part of its interest in Project Water if such transfer,  
23          assignment or sublease will adversely affect the Lessor without the  
24          prior written approval of Lessor. Lessee shall provide to CAWCD  
25          and the United States copies of any agreement transferring,  
26          assigning or subleasing all or any portion of Lessee's entitlement

1 under this Project Water Lease Agreement. Approval is hereby  
2 granted by the Secretary and the Lessor to the Lessee for the  
3 transfer, assignment or sublease of all or any part of its interest  
4 in Project Water under this Project Water Lease Agreement to the  
5 Arizona Cities of Phoenix, Chandler, Glendale, Mesa, Scottsdale and  
6 Tempe, or to its successor(s) in interest within the boundaries of  
7 its existing or future service area. Such approval shall be  
8 effective only upon the agreement by such transferee, assignee, or  
9 sublessee to pay all applicable water service charges associated  
10 with the delivery of Project Water, and otherwise to abide by all  
11 terms and conditions of this Project Water Lease Agreement.

12 3.13 CAWCD Repayment. For the purpose of determining the  
13 allocation and repayment of costs of the CAP as provided in Article  
14 9.3 of Contract No. 14-06-W-245 between the United States and CAWCD  
15 dated December 15, 1972, and any amendment or revision thereof, the  
16 costs associated with the delivery of water pursuant to this Water  
17 Project Lease Agreement shall be nonreimbursable, and such costs  
18 shall be excluded from CAWCD's repayment obligation.

19 4. GENERAL PROVISIONS

20 4.1 United States Consent to Lease. The United States hereby  
21 approves and consents to this Project Water Lease Agreement.

22 4.2 Effective Date. This Project Water Lease Agreement shall  
23 become effective on the enforceability date of the SRPMIC Agreement  
24 as set forth in Paragraph 21.6 thereof.

25 4.3 Effect of SRPMIC Agreement. On the enforceability date  
26 of the SRPMIC Agreement, this Project Water Lease Agreement shall



1 be effective and enforceable between the Lessor and the Lessee  
2 notwithstanding the performance or non-performance of other  
3 provisions of the SRPMIC Agreement not related to this Project  
4 Water Lease Agreement. The provisions of the SRPMIC Agreement that  
5 are related to this Project Water Lease Agreement are set forth in  
6 Paragraph 19.0 of the SRPMIC Agreement.

7 4.4 Invalidity of Agreement. If the Lessee's entitlement to  
8 Project Water under this Project Water Lease Agreement is  
9 determined to be invalid by a final judgment entered over the  
10 objection of the Lessee with the result that the Lessor reacquires  
11 the right to receive the Project Water, then the Lessor shall  
12 refund to the Lessee that portion of the lease payment that the  
13 number of years remaining in the lease term at the time of such  
14 determination bears to the total lease term.

15 4.5 Curing for Lessee's Nonpayment. If the initial payment  
16 is not made on or before the date such payment is due, or if any  
17 successive lease payment is not made on the date such payment is  
18 due, the Lessee shall be in default and the Lessor shall give  
19 written notice of default to the defaulting Lessee. The Lessor  
20 shall also send a copy of the notice of default to each other party  
21 to the SRPMIC Agreement which has entered into a Project Water  
22 Lease Agreement for the lease of the Lessor's Project Water ("Other  
23 Cities"). Notice shall be given in the manner and to the city  
24 officers specified in Paragraph 21.17 of the SRPMIC Agreement. The  
25 notice of default shall specifically describe the default and state  
26 the amount due by such Lessee ("Default Amount"). After notice of

1 default, the rights of the Lessee, the Lessor and the Other Cities  
2 shall be as follows:

3       A. During the first thirty (30) days following the notice of  
4       default ("First Grace Period"), the defaulting Lessee  
5       shall have the exclusive right to cure any such default  
6       by tendering the Default Amount to the Lessor together  
7       with interest on the Default Amount accrued at the annual  
8       rate of ten percent (10%) calculated from the due date.  
9       During the First Grace Period, the defaulting Lessee may  
10      cure only by tendering the Default Amount.

11      B. In the event that the defaulting Lessee has not cured  
12      within thirty (30) days following the notice of default,  
13      the Lessee, any of the Other Cities, and/or any  
14      combination thereof, may thereafter, but within sixty  
15      (60) days following the notice of default ("Second Grace  
16      Period"), cure the default by tendering the Default  
17      Amount to the Lessor together with interest on the  
18      Default Amount accrued at the annual rate of ten percent  
19      (10%) calculated from the due date. Each curing city or  
20      town shall succeed to the interest of the defaulting  
21      Lessee to the extent of its contribution. A cure  
22      effected pursuant to this section shall constitute full  
23      performance of such payment obligation.

24      C. After notice of default and after failure to cure as  
25      provided for in Paragraphs 4.5.A. and B. hereof, the  
26      defaulting Lessee will be indebted to the Lessor in the

1 amount of \$4,916,800 less principal payments made before  
2 the default together with interest, costs and reasonable  
3 attorneys' fees and the Lessor will be entitled to  
4 judgment for such an amount. Payment of the amount  
5 provided in this subparagraph shall constitute full  
6 performance of the Lessee's obligations under Paragraph  
7 3.3 of this Project Water Lease Agreement.

8 IN WITNESS WHEREOF the parties have executed this Project  
9 Water Lease Agreement on the date written above.

10 THE UNITED STATES OF AMERICA

11  
12 By William Barber  
Bureau of Indian Affairs

By [Signature]  
Bureau of Reclamation

13 Attest:

14 THE SALT RIVER PIMA-MARICOPA  
INDIAN COMMUNITY

15 [Signature]

16 By [Signature]  
Name: Gerald Antos  
Title: President

17 Attest:

18 TOWN OF GILBERT, an Arizona  
municipal corporation

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

20 Attest:

By \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

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

22 ///

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24  
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amount of \$4,916,800 less principal payments made before the default together with interest, costs and reasonable attorneys' fees and the Lessor will be entitled to judgment for such an amount. Payment of the amount provided in this subparagraph shall constitute full performance of the Lessee's obligations under Paragraph 3.3 of this Project Water Lease Agreement.

IN WITNESS WHEREOF the parties have executed this Project Water Lease Agreement on the date written above.

THE UNITED STATES OF AMERICA

By \_\_\_\_\_

Attest:

THE SALT RIVER PIMA-MARICOPA  
INDIAN COMMUNITY

By \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Attest:

TOWN OF GILBERT, an Arizona  
municipal corporation

*[Signature]*  
City Clerk

Attest:

By \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

*[Signature]*  
City Attorney

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EXHIBIT "3.n."

SRP-RWCD Extension Agreement

SRP-RWCD EXTENSION AGREEMENT

This Agreement, dated as of February 12, 1988, is entered into by the Roosevelt Water Conservation District, an irrigation district duly organized and existing under the laws of the State of Arizona, hereinafter referred to as the "District," and the Salt River Project Agricultural Improvement and Power District, an agricultural improvement district duly organized and existing under the laws of the State of Arizona, and the Salt River Valley Water Users' Association, a corporation organized and existing under the laws of the Territory, now the State, of Arizona, hereinafter collectively referred to as the "Project."

WHEREAS, District and Project now enjoy the benefits of a contract dated October 24, 1924 (hereinafter "the 1924 agreement"), wherein, among other things, Project agreed to deliver water to District; and

WHEREAS, said contract also bound District to pay for annual repairs and periodic relining of certain canals used by Project for the purpose of delivering water to its shareholders; and

WHEREAS, the aforementioned 1924 agreement between Project and District has become the subject of a settlement agreement dated as of February 12, 1988, wherein various named parties have agreed upon a settlement of outstanding water related litigation, including the claims to water rights of the Salt River Pima-Maricopa Indian Community and its members and in which agreement District, Project, and other parties, except the United States

1 on behalf of Indian tribes other than the Salt River Pima-Maricopa  
2 Indian Community, have confirmed (1) the 1924 agreement, (2) the  
3 stipulation, decision, and order in W. C. Lehane v. Salt River  
4 Valley Water Users' Association, et. al., Cause Number 32021-C,  
5 Superior Court of Maricopa County, Arizona, decided on or about  
6 September 18, 1940, and (3) the agreement between Project and  
7 District dated September 9, 1954; and

8 WHEREAS, the parties to the settlement agreement set  
9 forth terms and conditions which would affect the administration of  
10 the 1924 agreement, and they further required an extension of the  
11 1924 agreement by at least 50 years.

12 NOW THEREFORE, in consideration of the mutual covenants  
13 and agreements herein contained, the parties hereto covenant and  
14 agree with each other as follows:

15 ARTICLE I

16 The 1924 agreement shall be extended beyond its scheduled  
17 expiration date until December 31, 2086. From and after the effec-  
18 tive date of this Extension Agreement, the obligations of District  
19 and Project to render performance under the 1924 agreement, as  
20 amended and extended, shall be conditioned upon compliance with the  
21 provisions of the settlement agreement, and the terms and condi-  
22 tions of the 1924 agreement, as extended and amended, shall be  
23 construed consistent with the settlement agreement.

24 ARTICLE II

25 By way of clarifying the responsibility for maintenance  
26 and replacement of canal lining, as discussed in Article IX of the

1 1924 agreement, District shall participate with Project in an  
2 annual review of needed repair on the 28 miles of canal for which  
3 District currently has maintenance responsibility, as displayed on  
4 Exhibit "A" attached hereto. Relining of such reaches of the  
5 canals shall be scheduled at such times as the parties may agree  
6 upon from time to time and District shall bear the full financial  
7 responsibility for repair or relining of such reaches. Accord-  
8 ingly, if at any time District determines that it is in its best  
9 interest to pay for relining in lieu of continued repair, District  
10 may announce its conclusion to that effect and relining shall be  
11 completed in lieu of repair, on a mutually agreeable schedule as  
12 soon as reasonably practicable.

## ARTICLE III

14 This Agreement shall take effect on the enforceability  
15 date of the Salt River Pima-Maricopa Indian Community Water Rights  
16 Settlement Agreement. This Agreement shall inure to the benefit of  
17 and be binding upon the successors of the parties hereto, includ-  
18 ing, without limitation, any operating agent which succeeds to the  
19 obligation of Project or District hereunder.

20 IN WITNESS WHEREOF, the parties have executed this Agree-  
21 ment as of the date herein first above written.

22 Approved:

23 UNITED STATES OF AMERICA

SALT RIVER VALLEY WATER USERS'  
ASSOCIATION

24  
25 By 

By 

Its President



SALT RIVER PROJECT AGRICULTURAL  
IMPROVEMENT AND POWER DISTRICT

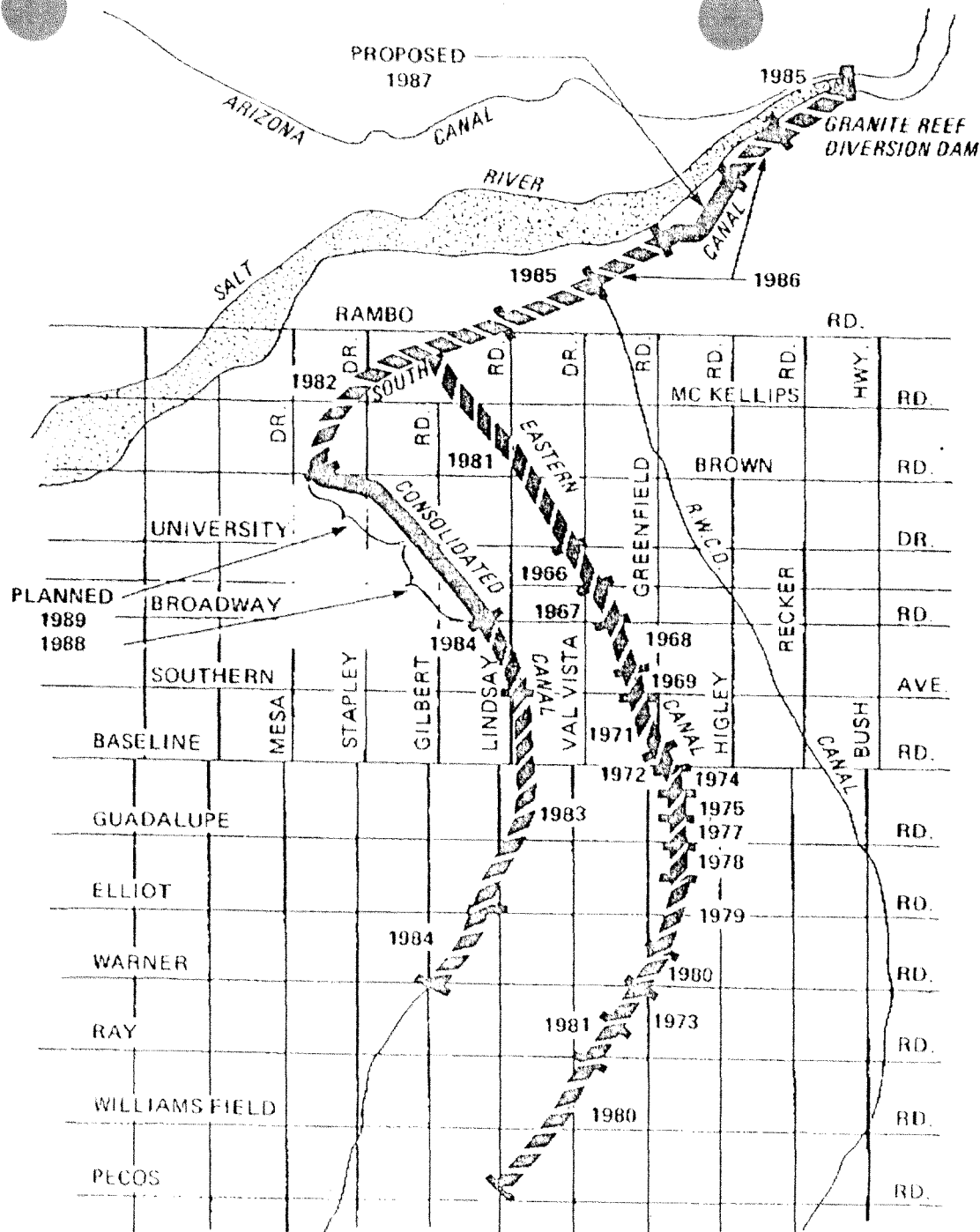
By

Carl R. Brown  
Its President

ROOSEVELT WATER CONSERVATION  
DISTRICT



By

Walter H. Brown  
Its President



MAP SHOWING LOCATION OF  
ORIGINAL LINING INSTALLED  
AND REPLACED BY R.W.C.D.

LEGEND:

-  ORIGINAL LINING  
INSTALLED BY R.W.C.D.
-  LINING REPLACED  
BY R.W.C.D.



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EXHIBIT "3.o"

Waiver and Release of Claims  
(SRPMIC)

WAIVER AND RELEASE OF CLAIMS

(a) Except as provided in paragraph (b) herein, the Salt River Pima-Maricopa Indian Community ("SRPMIC"), on behalf of itself and its members, in consideration of benefits realized by it under the Salt River Pima-Maricopa Indian Community Water Rights Settlement Agreement dated as of February 12, 1988 (hereinafter referred to as the "SRPMIC Agreement"), and in accordance with its commitment under Paragraph 17.1 of the SRPMIC Agreement and with the authorization granted in Section 10 of the Salt River Pima-Maricopa Indian Community Water Rights Settlement Act of 1988, hereby waives and releases:

(1) all past, present and future claims of water rights or injuries to water rights (including water rights in groundwater, surface water and effluent) for lands within the SRPMIC Reservation, from time immemorial to the date of this Waiver and Release, which SRPMIC may have, or which it may have standing to assert on behalf of its members, against the United States, the State of Arizona and any agency or political subdivision thereof, or any other person, corporation, or municipal corporation, arising under the laws of the United States or the State of Arizona; and

(2) any and all future claims of rights to water (including water rights in groundwater, surface water, and effluent) for lands within the SRPMIC Reservation, from and

1 after the date of execution of this Waiver and Release, which  
2 SRPMIC may have, or which it may have standing to assert on  
3 behalf of its members, against the United States, the State of  
4 Arizona, and any agency or political subdivision thereof, or  
5 any other person, corporation, or municipal corporation, under  
6 the laws of the United States or the State of Arizona; and

7 (3) all past, present and future claims of water rights  
8 or injuries to water rights (including water rights in  
9 groundwater, surface water and effluent) for lands outside of  
10 the exterior boundaries of the SRPMIC Reservation based upon  
11 aboriginal occupancy by the Pima and Maricopa Indians, which  
12 SRPMIC may have, or which it may have standing to assert on  
13 behalf of its members, against the United States, the State of  
14 Arizona and any agency or political subdivision thereof, or  
15 any other person, corporation, or municipal corporation, under  
16 the laws of the United States or the State of Arizona.

17 Nothing herein shall prevent SRPMIC from participating with other  
18 entities in further activities to augment the water supply  
19 available to the Salt River Valley.

20 (b) Notwithstanding the execution by SRPMIC of the Waiver and  
21 Release herein, SRPMIC, its members, and the United States on their  
22 behalf shall retain the right to assert the following claims for  
23 lands within the SRPMIC Reservation:

24 (1) Any claim for damages to water quality; provided,  
25 however, that paragraph (a) of this Waiver and Release of  
26 Claims shall be construed to bar SRPMIC and its members from

1 asserting any claim for damages to water quality caused by (a)  
2 the withdrawal of groundwater in accordance with the Arizona  
3 Groundwater Management Act; (b) the parties' performance of  
4 their obligations under the SRPMIC Agreement; (c) changes to  
5 water quality caused by the delivery or commingling of water  
6 delivered from the CAP with any of the water described in  
7 Paragraph 6.0 of the SRPMIC Agreement; or (d) any combination  
8 thereof;

9 (2) Claims for money damages arising prior to the  
10 effective date of the authorization provided for in Section 10  
11 of the Salt River Pima-Maricopa Indian Community Water Rights  
12 Settlement Act of 1988 asserted against the United States in  
13 the United States Claims Court;

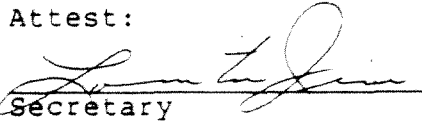
14 (3) Claims of water rights or injuries to water rights,  
15 other than those based upon aboriginal occupancy by the Pima  
16 and Maricopa Indians, for lands outside of the exterior  
17 boundaries of the SRPMIC Reservation acquired by SRPMIC or the  
18 United States on behalf of SRPMIC subsequent to January 1,  
19 1985;

20 (4) Claims in the Gila River Adjudication for the  
21 enforcement of SRPMIC's water rights as provided for in the  
22 SRPMIC Agreement; and

23 (5) Claims against any person for the breach or  
24 enforcement of the terms of the SRPMIC Agreement or rights  
25 recognized therein. The United States and SRPMIC waive their  
26 sovereign immunity from suit in Federal District Court in

1 regard to any claim which relates to the interpretation or  
2 enforcement of the SRPMIC Agreement; provided that the  
3 reservation of any right to assert a claim herein does not  
4 preclude or otherwise limit, in any way, any defenses to such  
5 a claim.

6 Attest:

7   
8 Secretary

THE SALT RIVER PIMA-MARICOPA  
INDIAN COMMUNITY

By 

Its President

9  
10 APPROVED:  
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13 \_\_\_\_\_  
Secretary of the Interior  
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UNITED STATES  
DEPARTMENT OF THE INTERIOR  
OFFICE OF THE SOLICITOR  
PHOENIX FIELD OFFICE  
One Renaissance Square  
Two North Central Avenue  
Suite 500  
Phoenix, Arizona 85004

COMM (602) 379-4756  
(602) 379-4127  
FTS: 261-4756  
FAX: 261-4127

BIA.PX.0008

March 6, 1990

Mr. Mike Brophy  
Ryley, Carlock and Applewhite  
101 N. First Avenue, #2600  
Phoenix, Arizona 85003-1973

Re: Salt River Pima-Maricopa Indian Water Rights Settlement

Dear Mr. Brophy:

This responds to your letter dated January 18, 1990, concerning exhibit "3.0" to the settlement agreement (the Community's waiver of claims). Your question is whether it is necessary to have the Secretary execute the subject waiver.

This issue has been discussed within the Department, and it was concluded that the Secretary need not execute the waiver. The reason for this is that section 10(b)(1) of the settlement act expressly authorizes the Community to execute the subject waiver concerning water rights claims. In light of this direct Congressional authorization, we see no need for the Secretary to execute the waiver along with the Community.

Sincerely yours,

Fritz L. Goreham  
Field Solicitor

William H. Swan  
For the Field Solicitor

cc: Shea and Wilks, Tribal Attorneys  
Barry Welch, Phoenix Area Office, BIA

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EXHIBIT "3.p."

Amendments to Bartlett Dam Agreement

1                   AN AMENDMENT TO THE AGREEMENT BETWEEN  
2                   THE UNITED STATES AND THE SALT RIVER  
3                   VALLEY WATER USERS' ASSOCIATION  
4                   CONCERNING VERDE RIVER STORAGE WORKS

5           This Amendment, made as of the 1st day of January, 1989, to  
6           the Agreement between the United States of America and the Salt  
7           River Valley Water Users' Association, a corporation organized and  
8           existing under the laws of the Territory, now the State, of  
9           Arizona, dated June 3, 1935, is between the United States of  
10          America, hereinafter referred to as the "United States," the Salt  
11          River Valley Water Users' Association, hereinafter referred to as  
12          the "Association," and the Salt River Project Agricultural  
13          Improvement and Power District, a political subdivision of the  
14          State of Arizona, hereinafter referred to as the "District." The  
15          Association and the District are hereinafter jointly referred to as  
16          the "Salt River Project."

17                                   WITNESSETH

18          WHEREAS, the United States and the Association entered into  
19          that Agreement dated June 3, 1935, for the construction, operation  
20          and maintenance of Bartlett Dam on the Verde River, hereinafter  
21          referred to as the "Bartlett Dam Agreement;" and

22          WHEREAS, the Bartlett Dam Agreement allots one-fifth of all  
23          developed water, as defined and further limited in that Agreement,  
24          to the United States, for and on behalf of the Salt River Pima-  
25          Maricopa Indian Community, hereinafter referred to as the  
26          Community, and four-fifths of all developed water to the  
                Association; and

1       WHEREAS, the Association, Phelps Dodge Corporation, a corpo-  
2       ration organized under the laws of the State of New York and duly  
3       authorized to conduct business in the State of Arizona, and the  
4       Defense Plant Corporation, a corporation created by the Recon-  
5       struction Finance Corporation pursuant to Section 5d of the  
6       Reconstruction Finance Corporation Act, as amended, entered into an  
7       Agreement dated March 1, 1944, for the construction, operation and  
8       maintenance of Horseshoe Dam on the Verde River, hereinafter  
9       referred to as the "Horseshoe Dam Agreement;" and

10       WHEREAS, the Horseshoe Dam Agreement provides in Article II,  
11       Section 6 that the Association will consider all increases in the  
12       amount of water stored in Bartlett Reservoir and Horseshoe  
13       Reservoir, in excess of five percent of the effective capacity of  
14       Bartlett Reservoir and up to the total net effective capacity of  
15       Bartlett Reservoir, the same as if such water were stored in  
16       Bartlett Reservoir in the first instance, or, said computation will  
17       be made in such other manner as shall be mutually acceptable to the  
18       United States and the Association; and

19       WHEREAS, the rights and obligations of the Association under  
20       the Bartlett Dam Agreement and the Horseshoe Dam Agreement were  
21       transferred to and assumed by the District pursuant to a contract  
22       dated March 22, 1937, and the amendments thereto dated February 28,  
23       1944, and September 12, 1949; and

24       WHEREAS, the United States; the Community; the State of  
25       Arizona; the Salt River Project; the Roosevelt Water Conservation  
26       District; the Roosevelt Irrigation District; the Arizona Cities of

1 Phoenix, Scottsdale, Glendale, Mesa, Tempe and Chandler and the  
2 Arizona Town of Gilbert; and the Central Arizona Water Conservation  
3 District have agreed through the SRPMIC Settlement Agreement, dated  
4 as of February 12, 1988, to settle once and for always the water  
5 rights of SRPMIC; and

6 WHEREAS, as part of the SRPMIC Settlement Agreement the United  
7 States and the Salt River Project agreed to amend the Bartlett Dam  
8 Agreement's allocation of developed water to the Community, as  
9 expressly contemplated by Article II, Section 6 of the Horseshoe  
10 Dam Agreement; and

11 WHEREAS, the Salt River Pima-Maricopa Indian Community Water  
12 Rights Settlement Act of 1988, Act of October 20, 1988, Pub.L. No.  
13 100-512, 102 Stat. 2553, directs the United States, acting through  
14 the Secretary of Interior, to amend the Bartlett Dam Agreement as  
15 provided therein;

16 NOW, THEREFORE, in consideration of the premises and the  
17 promises and agreements hereinafter set forth, it is agreed as  
18 follows:

- 19 1. Article 4 of the Bartlett Dam Agreement shall be deleted  
20 and replaced with the following language:

21 ARTICLE 4

22 Operation of Storage Works

23 The works to be constructed upon Verde River shall  
24 be operated and maintained by the Association. The  
25 Association may at any time store any part or all of flow  
26 of Verde River in the reservoir, and may at any time  
release any quantity of water from the reservoir or it  
may permit the river to flow through the reservoir  
without regulation.

- 1           2.   The following paragraphs shall be added to Article 6 of  
2           the Bartlett Dam Agreement;

3                 Salt River Valley Water Users' Association shall  
4                 increase the total Community allotment of developed water  
5                 under this Agreement to twenty thousand acre feet on  
6                 December 31 of any calendar year in which all of the  
7                 following three conditions occur:

8                     A.   For at least two hundred ninety-two days  
9                     of the calendar year the total water stored in Salt  
10                    River Valley Water Users' Association reservoirs on  
11                    the Verde River is more than the storage capacity of  
12                    Bartlett Dam Reservoir, which, for the purposes of  
13                    this Amendment, is deemed to be one hundred seventy-  
14                    eight thousand one hundred eighty-six acre-feet, as  
15                    periodically adjusted by Salt River Valley Water  
16                    Users' Association for silt losses;

17                    B.   The total Community allotment of developed  
18                    water under the Bartlett Dam Agreement generated  
19                    during the calendar year is less than seven thousand  
20                    acre-feet;

21                    C.   The total Community allotment of developed  
22                    water under the Bartlett Dam Agreement existing at  
23                    the end of the calendar year is less than twenty-  
24                    thousand acre-feet.

25                 Salt River Project shall provide monthly reports to  
26                 the Community showing the balance of the Community's  
27                 allotment of developed water as of the end of each month.

- 28           3.   A new Article 15 shall be added to the Bartlett Dam  
29           Agreement, providing as follows:

30                 Except for claims arising after the effective date  
31                 of this Amendment to enforce the Bartlett Dam Agreement  
32                 as amended, the United States waives all claims which the  
33                 United States may have, in its own right or on behalf of  
34                 the Community, against any person based upon

35                     (A) water rights or injuries to water rights  
36                     of the Community, its members or allottees under the  
37                     Bartlett Dam Agreement; or

38                     (B) water rights or injuries to water rights  
39                     held by the United States on behalf of the  
40                     Community, its members or allottees under the  
41                     Bartlett Dam Agreement.

4. This Amendment will become effective <sup>as of</sup> ~~on~~ the 1<sup>ST</sup> day of January, 1989.

Except as provided in this Amendment, all terms and conditions of the Bartlett Dam Agreement and the Horseshoe Dam Agreement shall remain unchanged and in full force and effect.

IN WITNESS WHEREOF the parties hereto have caused this Amendment to be executed as of the day and year first above written.

The United States of America

By Wilson Barber  
Bureau of Indian Affairs

By [Signature]  
Bureau of Reclamation

ATTEST:

By Paul Rice  
SECRETARY  
Its \_\_\_\_\_

Salt River Project Agricultural Improvement and Power District

By [Signature]  
PRESIDENT  
Its \_\_\_\_\_

ATTEST:

By Paul Rice  
SECRETARY  
Its \_\_\_\_\_

Salt River Valley Water Users' Association

By [Signature]  
PRESIDENT  
Its \_\_\_\_\_

**SRPMIC**

**Exhibit 7.0 – Kent Decree**



1    7.0   KENT DECREE WATER

2  
3    7.1 Historically, SRPMIC has used only a part of its Kent Decree entitlement to  
4    the normal flow of the Salt and Verde Rivers due to demand being less than  
5    available supply during parts of the year. SRPMIC is unable to store surplus  
6    portions of its normal flow entitlements for future use. In order that SRPMIC  
7    may use more fully its Kent Decree water entitlement, the United States will  
8    designate for use by SRPMIC for storage of Kent Decree water 7,000 acre-feet  
9    (hereinafter "Designated Space") of the Additional Active Conservation  
10   Capacity. The SRPMIC will be assessed evaporation losses using the same formula  
11   as arrived at under Plan 6 for the Plan 6 participants as provided in Paragraph  
12   5.26(b) of Exhibit "C" of the Plan 6 Agreement, with the participation of  
13   SRPMIC. In order to assure that Additional Active Conservation Capacity is  
14   available to SRPMIC, the Secretary agrees that each annual budget estimate  
15   submitted to the Executive Office of the President of the United States by the  
16   Department of the Interior shall include sufficient funding, in accordance with  
17   the Plan 6 Agreement as amended or modified. SRPMIC agrees to support the  
18   authorization for funding and modification of Roosevelt Dam as an integral part  
19   of the Plan 6 facilities.

20  
21   7.2 The Designated Space will be for seasonal re-regulation only (no annual  
22   carry over past October 1) and will be made available to accomplish other Plan 6  
23   purposes when not needed to re-regulate SRPMIC's Kent Decree entitlement. No  
24   part of the Plan 6 or SRP water supply will accrue to the United States or the  
25   SRPMIC under this Paragraph 7.0. The costs of the Designated Space shall be  
26   non-reimbursable, and the United States will forgive a portion of the non-

1 Federal funding obligation associated with the Designated Space. The amount of  
2 the costs so forgiven will be the ratio of number of acre-feet of Designated  
3 Space to the Additional Active Conservation Capacity multiplied by the amount  
4 the cities have agreed to contribute for that capacity under the Plan 6  
5 Agreement.

6  
7 7.3 Chandler, Glendale, Mesa, Phoenix, Scottsdale, Tempe, the United States,  
8 CAWCD, and SRP will cooperate with SRPMIC in obtaining any necessary State or  
9 Federal approval for joint use of the Designated Space or existing temporary  
10 space in SRP reservoirs consistent with this Paragraph 7.0. All parties to this  
11 Agreement shall refrain from initiating or supporting any legislative, adminis-  
12 trative, or judicial proceeding challenging Plan 6. The Cities of Chandler,  
13 Glendale, Mesa, Phoenix, Scottsdale and Tempe, the United States, CAWCD, and SRP  
14 agree that to the extent the provisions of Paragraphs 7.1, 7.2, and 7.3 hereof  
15 are contrary to the provisions of the Plan 6 Agreement, Paragraphs 7.1 through  
16 7.3 hereof shall control.

17  
18 7.4 SRP will provide temporary storage for the 7,000 acre-feet referred to in  
19 Paragraph 7.1 hereof in its existing reservoirs on the Salt River for SRPMIC  
20 Kent Decree water until the earlier of:

21 (a) the construction of Additional Active Conservation Capacity is com-  
22 pleted;

23 (b) a declaration is made by the United States that such Capacity will not  
24 be constructed; or

25 . . .

26 . . .

1 (c) December 31, 2005;

2 Provided, however, that this temporary storage entitlement shall always be  
3 subject to spill as provided in Paragraph 21.9 hereof and that evaporation will  
4 be charged monthly at the rate of one-half of one percent of the Kent Decree  
5 stored water balance at the end of each month. The temporary storage will be  
6 for seasonal re-regulation only (no annual carry over past October 1).

7

8 7.5 In the event of the occurrence of either condition described in Paragraph  
9 7.4(b) or 7.4(c) hereof, and to satisfy the requirements of Paragraph 7.1  
10 hereof, the United States will provide water from sources other than the Salt or  
11 Verde Rivers at no cost or expense to SRPMIC and at no cost or expense to the  
12 Plan 6 participants. The expenditure or advance of money, the performance of  
13 any work, or the supply of substitute water by the United States under this  
14 Paragraph 7.5 which may require appropriation of money by the Congress or the  
15 allotment of funds shall be contingent upon such appropriation or allotment  
16 being made.

17

18 7.6 The Kent Decree water will be used only on SRPMIC Reservation lands south  
19 of the Arizona Canal and inside the exterior boundary of the SRRD.

20

21 8.0 ADDITIONAL STORED WATER

22

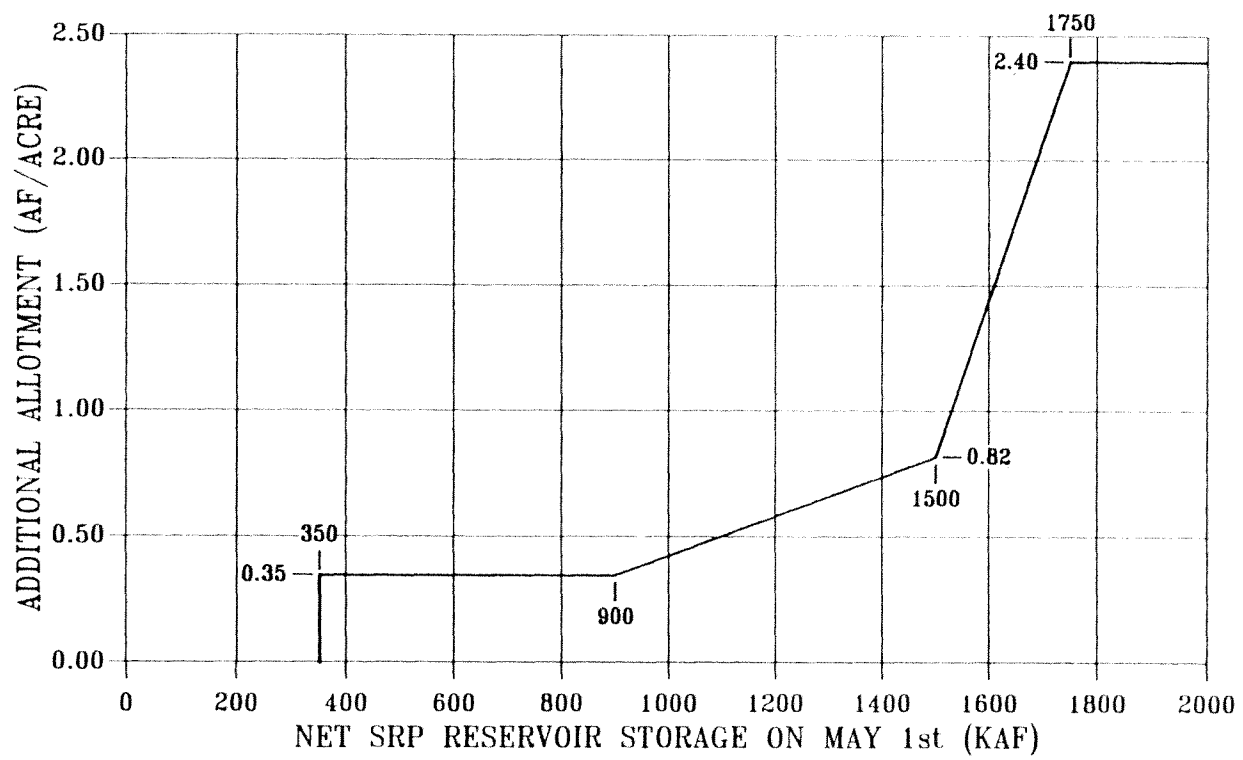
23 8.1 "Stored Water" is defined as that amount of water delivered to SRPMIC by  
24 SRP from SRP reservoirs up to 9,074 acre-feet per year pursuant to Paragraphs  
25 6.1 and 8.2 hereof.

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EXHIBIT "8.1"  
Additional Stored Water

# SRPMIC ADDITIONAL SURFACE WATER ALLOTMENT



2/12/88

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EXHIBIT "10.2"

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RWCD Credit Lands

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Land Classifications Subject to RWCD Credit  
of 5.6% of Water Diverted at Granite Reef Dam

<u>CLASSIFICATION</u>	<u>ACRES</u>
Association Regular Member Land	200,074.50
Special District Land - Tempe	22,494.65
Special District Land - Mormon Flat	9,707.30
Special District Land - Utah	2,091.65
New State Irrigation and Drainage District	2,327.70
Maricopa Garden Farms	1,258.10
Pump Contract Land (surface water only)	<u>215.10</u>
SUBTOTAL ASSOCIATIONS LANDS	238,170.00
Townsite Lands	9,615.30
Tempe Non-Member	458.35
Normal Flow Only Land Within SRRD	79.10
State of Arizona Tree Rows	35.50
SRPMIC Land in Sections 34, 35, & 36, T2N R5E	<u>1,125.00</u>
TOTAL	249,483.25

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EXHIBIT "10.3"

7

Map Showing RWCD Boundaries  
and  
City CAP Planning Areas

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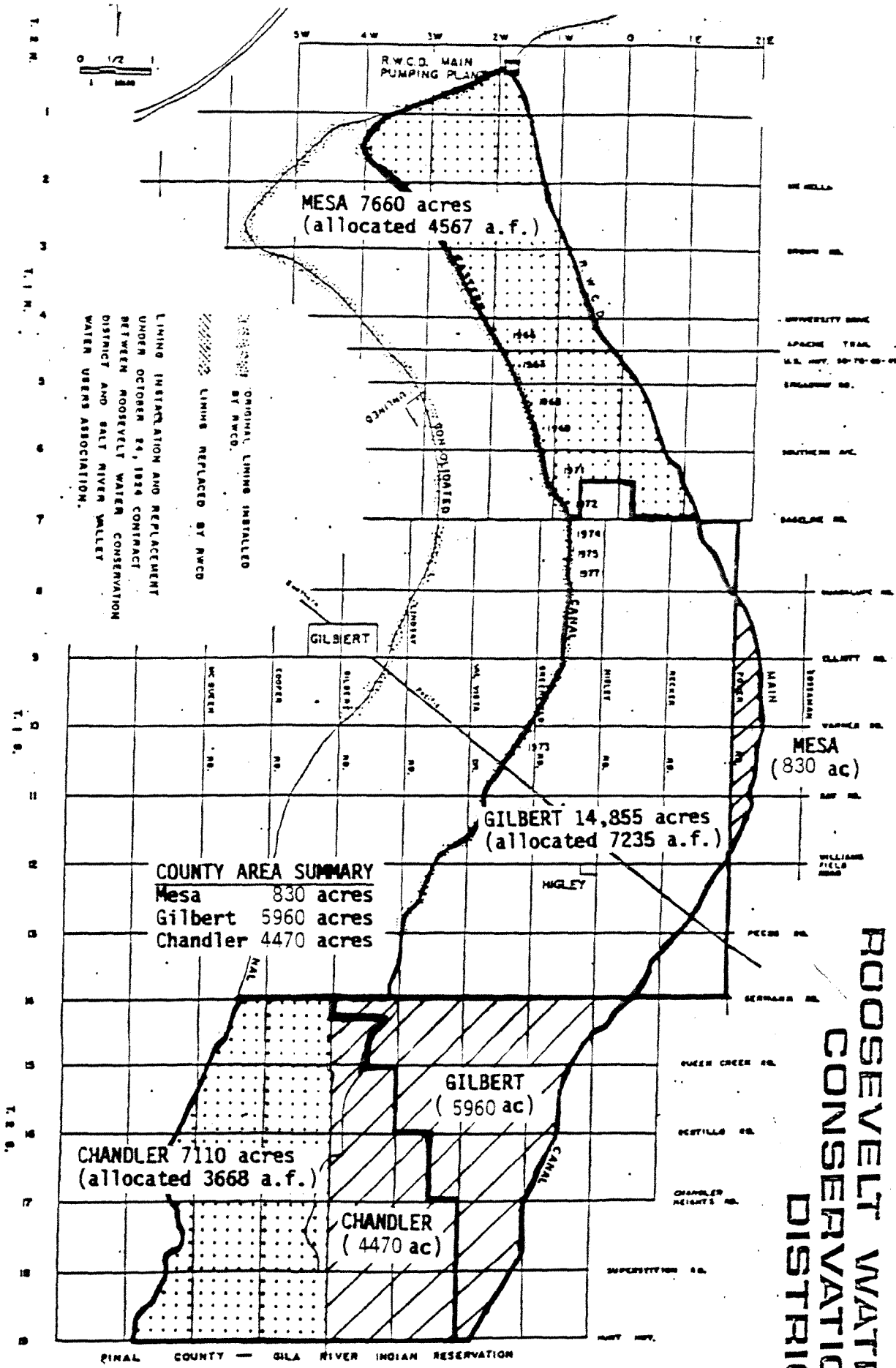
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PROPOSED PROJECT

ROOSEVELT WATER  
CONSERVATION  
DISTRICT

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EXHIBIT "12.3"

RWCD ASSIGNMENT TO CITIES

ASSIGNMENT

THIS AGREEMENT, dated as of February 12, 1988, is made and entered into by and among the United States of America acting through the Secretary of the Interior, the Central Arizona Water Conservation District, the Roosevelt Water Conservation District, the Arizona Cities of Chandler, Glendale, Scottsdale, Tempe, Mesa and Phoenix, and the Arizona Town of Gilbert.

R E C I T A L S

- A. The United States, the State of Arizona, the Salt River Pima-Maricopa Indian Community, the Salt River Valley Water Users' Association, the Salt River Project Agricultural Improvement and Power District, the Roosevelt Water Conservation District, the Roosevelt Irrigation District, the Arizona Cities of Chandler, Glendale, Mesa, Phoenix, Scottsdale and Tempe, and the Arizona Town of Gilbert, and the Central Arizona Water Conservation District have agreed to permanently settle the water rights of the Salt River Pima-Maricopa Indian Community and its members.
- B. The foregoing settlement agreement requires the assignment by the Roosevelt Water Conservation District to the Cities and Town participating in the settlement of a portion of the agricultural water supply available to Roosevelt Water Conservation District from the Central Arizona Project.
- C. The settlement agreement further requires the Secretary of the Interior, in certain events, to make available to the Cities and Town participating in the settlement a portion of the

1 agricultural water supply otherwise available from the Central  
2 Arizona Project.

3 NOW, THEREFORE, the parties hereto agree as follows:

4 1. Definitions. For purposes of this Agreement:

5 (a) "Cities" shall mean the City of Chandler, the City of  
6 Glendale, the City of Scottsdale, the City of Tempe, the City of  
7 Mesa, the City of Phoenix and the Town of Gilbert.

8 (b) "City" shall mean any one of the Cities.

9 (c) "Contractor" shall mean the Central Arizona Water  
10 Conservation District.

11 (d) "Repayment Contract" shall mean the Contract between the  
12 United States and the Central Arizona Water Conservation District  
13 for Delivery of Water and Repayment of Costs of the Central Arizona  
14 Project, dated December 15, 1972 (Contract No. 14-06-W-245), and  
15 any amendment or revision thereof.

16 (e) "Secretary" and "Contracting Officer" shall mean the  
17 Secretary of the Interior or his duly authorized representative.

18 (f) "Settlement Agreement" shall mean the Agreement dated as  
19 of February 12, 1988, among the United States of America; the Salt  
20 River Pima-Maricopa Indian Community; the Salt River Project  
21 Agricultural Improvement and Power District; the Salt River Valley  
22 Water Users' Association; the Roosevelt Water Conservation  
23 District; the Roosevelt Irrigation District; the Arizona Cities of  
24 Chandler, Glendale, Mesa, Phoenix, Scottsdale and Tempe, and the  
25 Arizona Town of Gilbert; and the Central Arizona Water Conservation  
26 District.

1 (g) "Subcontract" shall mean the Subcontract among the United  
2 States, the Central Arizona Water Conservation District, and the  
3 Roosevelt Water Conservation District, Providing for Water Service,  
4 Central Arizona Project, dated [to be supplied] (Contract No. [to  
5 be supplied]).

6 (h) "Subcontractor" shall mean the Roosevelt Water  
7 Conservation District.

8 All other terms used in this Agreement which are defined in the  
9 Repayment Contract or the Subcontract shall have the meanings  
10 ascribed to them in the Repayment Contract and the Subcontract.

11 2. Commencing with the later of the Year in which the  
12 Secretary issues Notice of Completion of the Water Supply System or  
13 the enforceability date of the Settlement Agreement, as defined in  
14 Paragraph 21.6 thereof, and for each Year thereafter until the term  
15 of the Subcontract expires, Subcontractor hereby assigns to the  
16 Cities an amount of Project Water, to be taken from Subcontractor's  
17 annual entitlement to Agricultural Water under Article 4.13 of the  
18 Subcontract, equal to the lesser of (a) 5,000 acre-feet, to be made  
19 available to the Cities at the Cities' Project turnouts, or  
20 (b) such amount of Project Water as is available from  
21 Subcontractor's annual entitlement to Agricultural Water after  
22 first providing for delivery to the Subcontractor, at the  
23 Subcontractor's Project turnout, of 8,000 acre-feet of Agricultural  
24 Water.

25 3. (a) If and when, as a result of a reduction in the  
26 acreage of eligible lands in Subcontractor's service area,

1 Subcontractor's entitlement to Agricultural Water under Article  
2 4.13 of its Subcontract is insufficient to provide for the delivery  
3 to the Cities at the Cities' Project turnouts of a total amount of  
4 3,000 acre-feet of Project Water (after first providing for the  
5 delivery of Subcontractor's entitlement to Agricultural Water as  
6 determined in accordance with subparagraph (b) of this Paragraph)  
7 in a Year in which the total supply of Agricultural Water available  
8 for delivery from the Project is 450,000 acre-feet or more, the  
9 Secretary shall thereafter make available for delivery to the  
10 Cities from the total supply of Agricultural Water otherwise  
11 available for delivery from the Project in each Year an amount of  
12 Project Water equal to the difference between (i) 3,000 acre-feet,  
13 to be made available to the Cities at the Cities' Project turnouts,  
14 and (ii) the amount of Project Water available to the Cities as a  
15 result of the assignment made in Paragraph 2 of this Agreement.

16 (b) If and when the provisions of subparagraph (a) of  
17 this Paragraph are implemented, Subcontractor's entitlement (i) to  
18 8,000 acre-feet of Agricultural Water under subparagraph (b) of  
19 Paragraph 2 of this Agreement or (ii) to such lesser amount of  
20 Agricultural Water as may be determined in conformance with the  
21 provisions contained in subparagraph (d) of Paragraph 12 of this  
22 Agreement shall be subject to reduction in an amount equal to  
23 Subcontractor's percentage entitlement to Agricultural Water under  
24 Subarticle 4.13(a) of the Subcontract multiplied by the amount of  
25 Agricultural Water made available by the Secretary for delivery to  
26 the Cities pursuant to subparagraph (a) of this Paragraph.

(c) Attached hereto as Appendix A are examples of how Paragraphs 2 and 3 of this Agreement are intended to operate under various conditions.

4. (a) Project Water made available to the Cities pursuant to Paragraph 2 of this Agreement shall be distributed among the Cities pro rata in proportion to the following maximum annual entitlements:

City of Chandler	=	972 acre-feet per Year;
City of Glendale	=	682 acre-feet per Year;
City of Scottsdale	=	23 acre-feet per Year;
City of Tempe	=	23 acre-feet per Year;
City of Mesa	=	627 acre-feet per Year;
City of Phoenix	=	1,136 acre-feet per Year;
Town of Gilbert	=	<u>1,537</u> acre-feet per Year;
TOTAL	=	5,000 acre-feet per Year.

(b) Project Water made available to the Cities pursuant to Paragraph 3 of this Agreement shall be distributed among the Cities pro rata in proportion to the following maximum annual entitlements:

City of Chandler	=	583 acre-feet per Year;
City of Glendale	=	409 acre-feet per Year;
City of Scottsdale	=	14 acre-feet per Year;
City of Tempe	=	14 acre-feet per Year;
City of Mesa	=	376 acre-feet per Year;
City of Phoenix	=	682 acre-feet per Year;
Town of Gilbert	=	<u>922</u> acre-feet per Year;
TOTAL	=	3,000 acre-feet per Year.

1 (c) Prior to the enforceability date of the Settlement  
2 Agreement, as defined in Paragraph 21.6 thereof, the relative  
3 amounts of Project Water to be made available to each of the Cities  
4 pursuant to subparagraphs (a) and (b) of this Paragraph may be  
5 adjusted by mutual agreement of such Cities. On and after the  
6 enforceability date of the Settlement Agreement, the relative  
7 amounts of Project Water to be made available to each of the Cities  
8 pursuant to subparagraphs (a) and (b) of this Paragraph may be  
9 adjusted only by mutual agreement of such Cities, the Contractor,  
10 and the United States.

11 (d) In the event this Agreement shall become effective  
12 and any City ("designating City") entitled to receive water here-  
13 under is unable to take delivery of such water by virtue of not  
14 having constructed a treatment plant capable of taking deliveries  
15 of water from the Central Arizona Project, the designating City  
16 shall in writing designate one or more Cities which are also  
17 parties to this Agreement to act as the interim recipients  
18 ("interim recipient") of the designating City's water, and water  
19 made available to the designating City under this Agreement shall  
20 be delivered by Contractor to the interim recipient(s) until such  
21 time as the designating City's treatment plant is completed and  
22 ready to take delivery of and treat deliveries of water from the  
23 Central Arizona Project. The designating City shall notify  
24 Contractor and Subcontractor of any such designation and shall also  
25 provide Contractor and Subcontractor with copies of any agreement  
26 between the designating City and the interim recipient(s). Any



1 such agreement shall not be inconsistent with any provisions of the  
2 Repayment Contract, the Subcontract, or this Agreement.

3 5. Notwithstanding anything in the Repayment Contract or the  
4 Subcontract to the contrary, Project Water made available to the  
5 Cities pursuant to this Agreement may be used for any M&I Water  
6 uses including but not limited to ground water recharge.

7 6. Notwithstanding any schedule or other instruction to the  
8 contrary, Project Water made available to the Cities pursuant to  
9 this Agreement, including any water delivered under a designation  
10 agreement entered into pursuant to Paragraph 4(d) hereof, shall be  
11 accounted for and treated by the Contractor and the Contracting  
12 Officer as having been scheduled for delivery by the Cities, and  
13 delivered to the Cities, prior to the delivery of any portion of  
14 the Cities' entitlements to Project M&I Water under the Cities' M&I  
15 Water service subcontracts (City of Chandler, Contract No. 5-07-30-  
16 W0070; City of Glendale, Contract No. 5-07-30-W0062; City of  
17 Scottsdale, Contract No. 5-07-30-W0063; City of Tempe, Contract  
18 No. 5-07-30-W0061; City of Mesa, Contract No. 5-07-30-W0060; City  
19 of Phoenix, Contract No. 5-07-30-W0059; Town of Gilbert, Contract  
20 No. [to be supplied]), prior to the delivery of any portion of the  
21 Cities' entitlements to under the Cities' Project Water Lease  
22 Agreements (Exhibits "3.m.1" through "3.m.7" of the Settlement  
23 Agreement), and prior to the delivery of any portion of the Cities'  
24 entitlements to "Colorado River water" under and as defined in the  
25 Cities' River Water Exchange Contracts (Exhibits "3.h.1" through  
26 "3.h.7" of the Settlement Agreement).

1           7. Except as otherwise provided in Paragraph 11 hereof, the  
2 Cities shall make payment for Project Water made available to the  
3 Cities pursuant to this Agreement in accordance with the terms and  
4 conditions of contracts to be entered into among the United States,  
5 the Contractor, and each of the Cities, the forms of which are  
6 attached as Exhibits "3.h.1" through "3.h.7" to the Settlement  
7 Agreement.

8           8. Except as provided in Paragraph 10 of this Agreement,  
9 nothing in this Agreement shall relieve the Subcontractor of its  
10 obligation to make the payments required in the Subcontract.

11           9. For the purpose of determining the allocation and  
12 repayment of costs of the CAP as provided in Article 9.3 of the  
13 Repayment Contract, the costs associated with the delivery of  
14 Project Water to the Cities pursuant to this Agreement shall be  
15 nonreimbursable, and such costs shall be excluded from the  
16 Contractor's repayment obligation.

17           10. Commencing with the later of the Year in which the  
18 Secretary issues Notice of Completion of the Water Supply System or  
19 the enforceability date of the Settlement Agreement, as defined in  
20 Paragraph 21.6 thereof, the Subcontractor's obligation to pay  
21 Agricultural Water service capital charges pursuant to Subarticle  
22 5.2(a) of the Subcontract shall be reduced in each Year by an  
23 amount equal to \$2.00 per acre-foot, or such amount as may be de-  
24 termined by the Contracting Officer based on payment capacity  
25 determinations provided for in the Repayment Contract, multiplied  
26 by the total amount of Project Water assigned by the Subcontractor

1 to the Cities pursuant to Paragraph 2 of this Agreement and  
2 scheduled for delivery by the Cities in such Year.

3 11. (a) Each City agrees to indemnify and hold harmless the  
4 Contractor and the Subcontractor from and against any operation,  
5 maintenance, and replacement costs associated with Project Water  
6 made available for delivery to the City pursuant to Paragraph 2 of  
7 this Agreement. Each City further agrees to indemnify and hold  
8 harmless the Contractor and the Subcontractor from and against any  
9 Agricultural Water service capital charges associated with any  
10 Project Water assigned by the Subcontractor to the City pursuant to  
11 Paragraph 2 of this Agreement. The liability of each City under  
12 this Paragraph 11(a) shall be its sole and separate obligation, and  
13 shall not be an obligation joint and several with any other City or  
14 Cities.

15 (b) In the event any City shall default and fail to  
16 indemnify Contractor or Subcontractor as required in Paragraph  
17 11(a) hereof, then such City's entitlement to water under this  
18 Agreement shall be forfeit and such entitlement shall be  
19 redistributed pro rata to each of the other Cities which are  
20 parties to this Agreement. The redistribution of water shall be  
21 effected by means of a notice from Subcontractor and Contractor, if  
22 either has not been indemnified, to the defaulting City and to the  
23 other Cities which are parties to this Agreement, and such  
24 redistribution shall be effective on the thirty-fifth day after the  
25 notice is given. Within ten days of receiving the notice of re-  
26 distribution, each City other than the defaulting City shall pay to

1 Subcontractor or Contractor, as the case may be, its share of the  
2 amount the defaulting City shall have failed to pay, which share  
3 shall be in the proportion which the amount of water redistributed  
4 to such City bears to the total amount of water redistributed. In  
5 the event any City to which water is redistributed shall fail to  
6 make the payment hereby required to be made within the time herein  
7 prescribed, Subcontractor or Contractor, as the case may be, shall  
8 be free to redistribute such City's entitlement to redistributed  
9 water to any other City which makes such payment and which is also  
10 a party to this Agreement.

11 12. (a) Subcontractor's entitlement to Agricultural Water  
12 under Subarticle 4.13(a) of the Subcontract shall be 5.98 percent  
13 of the total supply of Agricultural Water available for delivery  
14 from the Project (subject to reduction by reason of the factors  
15 identified in Subarticle 4.13(a) of the Subcontract as determined  
16 by the Contracting Officer) unless, prior to the issuance by the  
17 Secretary of Notice of Completion of the Water Supply System,  
18 Subcontractor notifies the Contractor and the Contracting Officer  
19 that it wishes to reduce its entitlement to a lesser percentage of  
20 the total Agricultural Water supply. Subject to the requirements  
21 and limitations of this Paragraph 12, Subcontractor's percentage  
22 entitlement under Subarticle 4.13(a) of the Subcontract shall be as  
23 stated in the notice from the Subcontractor to the Contractor and  
24 the Contracting Officer.

25 (b) Notwithstanding the foregoing, the Contractor and  
26 the Contracting Officer may at any time prior to the issuance of

1 such Notice of Completion require the Subcontractor to specify its  
2 entitlement to Agricultural Water under Subarticle 4.13(a) of the  
3 Subcontract by notifying the Subcontractor that it must specify  
4 such entitlement within six months of the date that the Contractor  
5 and the Contracting Officer issue such notice. Subject to the  
6 requirements and limitations of this Paragraph 12, Subcontractor's  
7 percentage entitlement to Agricultural Water under Subarticle  
8 4.13(a) of the Subcontract shall be as specified by the  
9 Subcontractor in response to the notice issued by the Contractor  
10 and the Contracting Officer. In the event the Subcontractor fails  
11 to make such specification within the time required,  
12 Subcontractor's entitlement shall be fixed at 5.98 percent of the  
13 total Agricultural Water supply (subject to adjustment by reason of  
14 the factors identified in Subarticle 4.13(a) of the Subcontract as  
15 determined by the Contracting Officer).

16 (c) At the time the Subcontractor notifies the  
17 Contractor and the Contracting Officer of its percentage  
18 entitlement pursuant to subparagraph (a) of this Paragraph, or at  
19 the time the Subcontractor specifies its entitlement pursuant to  
20 subparagraph (b) of this Paragraph, Subcontractor may relinquish:

21 (i) all or part of its rights to any additional Agricultural  
22 Water entitlement under Subarticle 4.13(a) of the  
23 Subcontract to be made available to the Subcontractor as  
24 a result of deductions made in other subcontractors'  
25 entitlements to Agricultural Water to reflect removal of  
26 eligible lands from agricultural use; and

1 (ii) all or part of its rights to any additional Agricultural  
2 Water entitlement under Subarticle 4.13(b) of the  
3 Subcontract to be made available to the Subcontractor as  
4 a result of the Secretary's reallocation of entitlements  
5 to Agricultural Water that were not contracted for by the  
6 entities to which such entitlements were first made  
7 available;

8 Provided, however, that the Subcontractor shall relinquish at least  
9 5,000 acre-feet, or the percentage of the projected Agricultural  
10 Water supply that most closely approximates 5,000 acre-feet, of any  
11 additional Agricultural Water entitlement to which the  
12 Subcontractor would be entitled under Subarticle 4.13(b) of the  
13 Subcontract as a result of the Secretary's reallocation of entitle-  
14 ments to Agricultural Water that were not contracted for by the  
15 entities to which such entitlements were first made available.

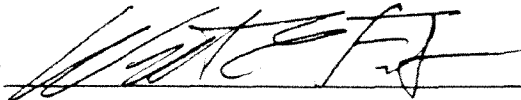
16 (d) Subject to the requirements and limitations of this  
17 Paragraph 12, Subcontractor may select its entitlement to  
18 Agricultural Water under Subarticle 4.13(a) of the Subcontract  
19 based upon its own evaluation of potential Agricultural Water  
20 supplies and its own requirements; Provided, however, that said  
21 Subcontractor's entitlement to Agricultural Water shall in no event  
22 exceed the lesser of 5.98 percent or the percentage entitlement  
23 determined by dividing the number of acres of eligible lands in the  
24 Subcontractor's service area by the total number of acres of  
25 eligible lands in the service areas of all subcontractors of  
26 Agricultural Water, as determined by the Contracting Officer.

13. Except as provided in this Agreement, all terms and conditions of the Subcontract shall remain unchanged and in full force and effect.

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

THE UNITED STATES OF AMERICA

By



Attest:

CENTRAL ARIZONA WATER CONSERVATION  
DISTRICT, an Arizona municipal  
corporation

Secretary

By


Name: George W. Barr  
Title: President

Attest:

ROOSEVELT WATER CONSERVATION  
DISTRICT, an Arizona municipal  
corporation

Secretary

By



Name: Mark W. Dobson  
Title: President

Attest:

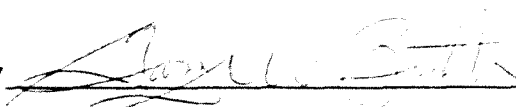
CITY OF PHOENIX, a Municipal  
corporation, MARVIN A. ANDREWS,  
City Manager

Clerk

Approved as to Form:

City Attorney

By



1 Attest:

2 Mark C. Meyer  
Clerk

3 Approved as to Form:

4 Barbara A. Hillyard  
5 City Attorney

7 Attest:

8 Jauergne Lehm  
Clerk

9 Approved as to Form:

10  
11 City Attorney

13 Attest:

14 [Signature]  
15 Clerk

16 Approved as to Form:

17 [Signature]  
18 City Attorney

20 Attest:

21 Helen R. Fowler  
Clerk

22 Approved as to Form:

23 [Signature]  
24 City Attorney

25  
26 . . .

CITY OF SCOTTSDALE, an Arizona  
municipal corporation

By Herbert R. Drinkwater  
Name: Herbert R. Drinkwater  
Title: Mayor

CITY OF GLENDALE, an Arizona  
municipal corporation

By George R. Renner  
Name: George R. Renner  
Title: Mayor

CITY OF MESA, an Arizona municipal  
corporation

By [Signature]  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

CITY OF TEMPE, an Arizona municipal  
corporation

By Harry E. Mitchell  
Name: HARRY E. Mitchell  
Title: Mayor



1 Attest:

CITY OF CHANDLER, an Arizona  
municipal corporation2 *Elora Silverthorn*  
3 Clerk, Acting

4 Approved as to Form:

By

Name: *Richard Dugan*  
Title: *Mayor*5 \_\_\_\_\_  
6 City Attorney

7 Attest:

TOWN OF GILBERT, an Arizona municipal  
corporation8 *William Silverthorn*  
9 Clerk

10 Approved as to Form:

By

Name: *Steve M. Berman*  
Title: \_\_\_\_\_11 *William Silverthorn*  
12 City Attorney13  
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APPENDIX A

The following are five examples of how Paragraphs 2 and 3 of the Assignment are intended to operate under varying water supply conditions and assuming varying entitlements to CAP Agricultural Water for Roosevelt Water Conservation District ("RWCD") under Subarticle 4.13(a) of RWCD's CAP Agricultural Subcontract.

EXAMPLE 1

1. Assume the total amount of CAP Agricultural Water available for delivery in a given Year (after losses) = 1,000,000 AF.
2. Assume RWCD's percentage entitlement under Subarticle 4.13(a) of the Subcontract = 5.98%.
3. RWCD's total entitlement to Agricultural Water in such Year under Subarticle 4.13(a) of the Subcontract = 59,800 AF.  
$$(5.98\% \times 1,000,000 \text{ AF} - 59,800 \text{ AF})$$
4. Cities' entitlement under Paragraph 2 of the Assignment = the lesser of:
  - (a) 5,000 AF, or
  - (b)  $59,800 \text{ AF} - 8,000 \text{ AF} = 51,800 \text{ AF}$
5. RWCD's balance = 54,800 AF.

EXAMPLE 2

1. Assume the total amount of CAP Agricultural Water available for delivery in a given Year (after losses) = 450,000 AF.
2. Assume RWCD's percentage entitlement under Subarticle 4.13(a) of the Subcontract = 2.89%.
3. RWCD's total entitlement to Agricultural Water in such Year under Subarticle 4.13(a) of the Subcontract = 13,005 AF.  
$$(2.89\% \times 450,000 \text{ AF} = 13,005 \text{ AF})$$
4. Cities' entitlement under Paragraph 2 of the Assignment = the lesser of:
  - (a) 5,000 AF, or
  - (b)  $13,005 \text{ AF} - 8,000 \text{ AF} = 5,005 \text{ AF}.$
5. RWCD's balance = 8,005 AF.

EXAMPLE 3

1. Assume the total amount of CAP Agricultural Water available for delivery in a given Year (after losses) = 100,000 AF.
2. Assume RWCD's percentage entitlement under Subarticle 4.13(a) of the Subcontract = 2.89%.
3. RWCD's total entitlement to Agricultural Water in such Year under Subarticle 4.13(a) of the Subcontract = 2,890 AF.  
(2.89% X 100,000 AF = 2,890 AF)
4. Cities' entitlement under Paragraph 2 of the Assignment = 0.
5. Cities' entitlement under Paragraph 3 of the Assignment = 0 (because RWCD's entitlement is sufficient to provide for delivery to the Cities of at least 3,000 AF in any year in which the total supply is 450,000 AF or more -- See Example 2).

EXAMPLE 4

1. Assume the total amount of CAP Agricultural Water available for delivery in a given Year (after losses) = 450,000 AF.
2. Assume RWCD's percentage entitlement under Subarticle 4.13(a) of the Subcontract = 2.44%.
3. RWCD's total entitlement to Agricultural Water in such Year under Subarticle 4.13(a) of the Subcontract = 10,980 AF.  
$$(2.44\% \times 450,000 \text{ AF} = 10,980 \text{ AF})$$
4. Cities' entitlement under Paragraph 2 of the Assignment = the lesser of:
  - (a) 5,000 AF, or
  - (b)  $10,980 \text{ AF} - 8,000 \text{ AF} = 2,980 \text{ AF}$ .
5. Cities' entitlement under Paragraph 3 of the Assignment =
  - (a) IF 2.44% is a result of a reduction in eligible acreage in RWCD's service area:  
Cities' entitlement =  $3,000 \text{ AF} - 2,980 \text{ AF} = 20 \text{ AF}$   
CITIES' TOTAL = 3,000 AF
  - (b) IF 2.44% is not a result of a reduction in eligible acreage in RWCD's service area, Cities' entitlement under Paragraph 3 of the Assignment = 0  
CITIES' TOTAL = 2,980 AF

EXAMPLE 5

1. Assume the total amount of CAP Agricultural Water available for delivery in a given Year (after losses) = 100,000 AF.
2. Assume RWCD's percentage entitlement under Subarticle 4.13(a) of the Subcontract = 2.44%.
3. RWCD's total entitlement to Agricultural Water in such Year under Subarticle 4.13(a) of the Subcontract = 2,440 AF.  
$$(2.44\% \times 100,000 \text{ AF} = 2,440 \text{ AF})$$
4. Cities' entitlement under Paragraph 2 of the Assignment = 0.
5. Cities' entitlement under Paragraph 3 of the Assignment:
  - (a) IF 2.44% is a result of a reduction in eligible acreage in RWCD's service area, Cities' entitlement = 3,000 AF.
  - (b) RWCD's contribution =  $2.44\% \times 3,000 \text{ AF} = 73 \text{ AF}$ .
  - (c) RWCD's net entitlement =  $2,440 \text{ AF} - 73 \text{ AF} = 2,367 \text{ AF}$ .

BUT

  - (d) If 2.44% is not a result of a reduction in eligible acreage in RWCD's service area, Cities' entitlement under Paragraph 3 of the Assignment = 0.

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EXHIBIT "12.14"

12

TRUST AGREEMENT

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TRUST AGREEMENT

THIS TRUST AGREEMENT FOR THE SALT RIVER PIMA-MARICOPA INDIAN COMMUNITY WATER RIGHTS SETTLEMENT TRUST FUND (hereinafter referred to as the "Trust Agreement") is made and entered into as of ~~this~~ the 12th day of February, 1988, by and between the Cities of Phoenix, Scottsdale, Glendale, Mesa, Tempe and Chandler, Arizona, and the Town of Gilbert, Arizona, each a governmental municipal corporation organized under the laws of the State of Arizona (hereinafter referred to collectively as the "DEPOSITOR CITIES" or "DEPOSITORS" and individually as "DEPOSITOR CITY" or "DEPOSITOR"), and the STATE TREASURER OF THE STATE OF ARIZONA (hereinafter referred to as the "TRUSTEE").

P R E A M B L E

WHEREAS, the United States, the State of Arizona, the Salt River Pima-Maricopa Indian Community ("SRPMIC"), the Salt River Valley Water Users' Association, the Salt River Project Agricultural Improvement and Power District ("SRP"), the Roosevelt Water Conservation District, the Roosevelt Irrigation District, the Cities of Phoenix, Scottsdale, Glendale, Mesa, Tempe and Chandler, Arizona, the Town of Gilbert, Arizona, and the Central Arizona Water Conservation District ("CAWCD") have agreed to permanently settle the water rights of the Salt River Pima-Maricopa Indian Community and its members to finally resolve pending litigation on water rights and damage claims and have executed a settlement . . . .

TRUST AGREEMENT

THIS TRUST AGREEMENT FOR THE SALT RIVER PIMA-MARICOPA INDIAN COMMUNITY WATER RIGHTS SETTLEMENT TRUST FUND (hereinafter referred to as the "Trust Agreement") is made and entered into as of the 12th day of February, 1988, by and between the Cities of Phoenix, Scottsdale, Glendale, Mesa, Tempe and Chandler, Arizona, and the Town of Gilbert, Arizona, each a governmental municipal corporation organized under the laws of the State of Arizona (hereinafter referred to collectively as the "DEPOSITOR CITIES" or "DEPOSITORS" and individually as "DEPOSITOR CITY" or "DEPOSITOR"), and the STATE TREASURER OF THE STATE OF ARIZONA (hereinafter referred to as the "TRUSTEE").

P R E A M B L E

WHEREAS, the United States, the State of Arizona, the Salt River Pima-Maricopa Indian Community ("SRPMIC"), the Salt River Valley Water Users' Association, the Salt River Project Agricultural Improvement and Power District ("SRP"), the Roosevelt Water Conservation District, the Roosevelt Irrigation District, the Cities of Phoenix, Scottsdale, Glendale, Mesa, Tempe and Chandler, Arizona, the Town of Gilbert, Arizona, and the Central Arizona Water Conservation District ("CAWCD") have agreed to permanently settle the water rights of the Salt River Pima-Maricopa Indian Community and its members to finally resolve pending litigation on water rights and damage claims and have executed a settlement . . . .

1 agreement (hereinafter referred to as the "Settlement Agreement");  
2 and

3 WHEREAS, pursuant to the Settlement Agreement, the Depositor  
4 Cities agreed to an exchange of water (the "River Water Exchange");  
5 and

6 WHEREAS, pursuant to the Settlement Agreement, each Depositor  
7 City has entered into an agreement with the United States and CAWCD  
8 providing for delivery of Colorado River water as part of the River  
9 Water Exchange (the "River Water Exchange Contract"); and

10 WHEREAS, the Settlement Agreement provides for the establish-  
11 ment of an escrow account to hold monies deposited by the Depositor  
12 Cities to be used by the United States to carry out the River Water  
13 Exchange; and

14 WHEREAS, the City Council of each Depositor City has by ordi-  
15 nance or resolution, copies of which are attached as Exhibit A,  
16 authorized the Settlement Agreement providing, among other things,  
17 for the establishment of an escrow account hereinafter identified  
18 as SRPMIC City Exchange Trust Fund to be held in trust for the  
19 purposes outlined in the Settlement Agreement and the River Water  
20 Exchange Contract; and

21 WHEREAS, the Depositor Cities and the Trustee have agreed that  
22 the Fund shall be maintained by the Trustee pursuant to Title 35,  
23 Chapter 2, Article 2, Arizona Revised Statutes;

24 THEREFORE, the Depositor Cities and the Trustee agree to the  
25 following:

26 . . .

ARTICLE ONE

ESTABLISHMENT OF A TRUST RELATIONSHIP

1.1 Acceptance of Trust. The Trustee hereby accepts this trust as evidenced by the Trustee's execution of this Trust Agreement. This trust shall be known as the SRPMIC CITY EXCHANGE TRUST FUND ("the Fund").

1.2 Administration of Fund. The Trustee shall hold, administer and invest the Fund and all sums paid to the Trustee in accordance with the provisions of this Trust Agreement. The Trustee shall receive any deposits paid to the Trustee in cash or in such other form as the Trustee may deem acceptable. All deposits so received shall hereinafter be referred to as the "Fund" and shall be held, administered and distributed by the Trustee pursuant to the terms of this Trust Agreement.

ARTICLE TWO

DEPOSITS

2.1 Deposits to the Fund. The Trustee shall receive any monies paid to the Trustee for deposit to the Fund by the Depositors. Each Depositor shall have a separate account within the Fund. Upon receipt, the Trustee shall issue the Depositor a validated receipt for the amount of the deposit and shall provide a copy of such receipt to all other participants in the Settlement Agreement at the addresses provided in attached Exhibit B. In the event a Depositor makes a deposit on behalf of another City pursuant to the Curing Agreement, attached hereto as Exhibit C, the . . .

1 deposit shall be credited to a separate account(s) as specified by  
2 the Depositor.

3 2.2 Amount and Date of Deposit. By October 20, 1989, the  
4 Depositors shall make collected funds in the following amounts  
5 available to the Trustee for deposit in the Fund:

6	City of Chandler	\$1,750,500
7	City of Glendale	1,227,600
8	City of Scottsdale	40,500
9	City of Tempe	40,500
	City of Mesa	1,129,500
	City of Phoenix	2,045,700
	Town of Gilbert	<u>2,765,700</u>

10 TOTAL. . . . . \$9,000,000

11 ARTICLE THREE

12 DISBURSEMENTS

13 3.1 Disbursements from the Fund. The Trustee shall make  
14 payment from the Fund to the United States through the Secretary of  
15 Interior, or his designee at his discretion, in accordance with  
16 Paragraph 3.3 hereof. If the Depositor has made a deposit on be-  
17 half of another Depositor City ("Original Obligee") pursuant to the  
18 Curing Agreement, the Trustee shall create a new account in the  
19 Fund for the deposit ("Curing Account"). Each Curing Account shall  
20 be identified by the name of the Original Obligee and the Depositor  
21 City making the curing payments ("Curing City"). The funds in the  
22 Curing Account shall be allocated as if the Curing Account deposit  
23 had been made by the Original Obligee and the Trustee is authorized  
24 to disburse from such account for the authorized purposes. Upon  
25 making payment from the Fund, the Trustee shall notify the  
26 Depositor Cities of the amount of and recipient of the payment and

1 shall provide a copy of such notice to all other participants to  
2 the Settlement Agreement at the addresses provided in Exhibit B.

3 3.2 Purpose. Monies from the Fund are to be expended by the  
4 United States Department of the Interior for the purpose of ac-  
5 quiring the rights to Colorado River water specified in Paragraph  
6 12.1 of the Settlement Agreement, and may be expended only for the  
7 purpose of paying the purchase price to be paid to the landowners  
8 and such necessary and reasonable costs as are customarily incurred  
9 by purchasers in acquiring real estate in Arizona.

10 3.3 Disbursement Instructions. The Trustee shall make pay-  
11 ment from the Fund to the United States through the Secretary of  
12 Interior or his designee at his discretion, upon written instruc-  
13 tion executed by all Depositor Cities that have deposited monies  
14 into the Fund and deposit by the United States with the Trustee the  
15 following statement:

16 The undersigned, being duly authorized on be-  
17 half of the United States through the Secretary  
18 of Interior, does hereby unequivocally and  
19 irrevocably certify: (1) that all conditions  
20 precedent to the United States' delivery of  
21 22,000 acre-feet of Colorado River water  
22 annually to the Cities under the SRPMIC Water  
23 Rights Settlement Agreement, dated as of  
24 February 12, 1988, have been fully satisfied  
25 but for the payment of up to Nine Million  
Dollars (\$9,000,000) by the Cities; (2) that  
upon payment of said sum by the Cities, the  
United States is ready, willing and able to  
provide the Cities with 22,000 acre-feet of  
Colorado River water annually in accordance  
with the SRPMIC Water Rights Settlement Agree-  
ment; (3) that I have been duly authorized to  
receive said \$9,000,000; and (4) that said  
funds shall be used exclusively to fund the

26 . . .

1 acquisition of rights to Colorado River water,  
2 as provided in the Settlement Agreement.

3 DATED this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

4  
5 By \_\_\_\_\_  
6 As Authorized Representative  
7 of the United States through  
8 the Secretary of the Interior

9 The Trustee shall pay the United States within 5 business days of  
10 receipt of both the request for payment by the United States and  
11 the written instruction executed by all of the Depositor Cities.  
12 The payment made by the Trustee shall be in the amount requested by  
13 the United States, subject to the allowable purposes stated in  
14 Paragraph 3.2 hereof and in the Settlement Agreement, but in no  
15 event more than a total of \$9 million. If the amount requested by  
16 the United States is less than \$9 million, payment shall be pro-  
17 rated from the accounts of all of the Depositor Cities in the fol-  
18 lowing percentages:

18	City of Chandler	19.45%
19	City of Glendale	13.64%
20	City of Scottsdale	0.45%
21	City of Tempe	0.45%
22	City of Mesa	12.55%
23	City of Phoenix	22.73%
24	Town of Gilbert	<u>30.73%</u>

25 100.00%

26 If a Curing Account has been created, payment shall be made from  
that account in the percentage listed above for the Original  
Obligee.

. . .

ARTICLE FOUR

EARNINGS

4.1 Disposition of Earnings. The Trustee shall credit to the Depositor any earnings received on monies deposited in the Fund by the Depositor, on a monthly basis as soon as practicable following the end of each month.

4.2 Basis. Income on monies of the Fund shall be calculated and paid in the same manner as provided for monies held by the Trustee pursuant to Section 35-326, Arizona Revised Statutes, as it may be amended from time to time.

ARTICLE FIVE

POWERS OF THE TRUSTEE

5.1 Administrative Powers. The Trustee shall administer the Fund in the manner contemplated by Title 35, Chapter 2, Article 2, Arizona Revised Statutes, as it may be amended from time to time, and in accordance with his statutory powers and duties.

5.2 Investment Powers. The Trustee shall invest the assets of the Fund in any security authorized for investment pursuant to Title 35, Chapter 2, Article 2, and may commingle the assets of the fund with monies or other funds maintained by the Trustee that are oriented toward such investments.

ARTICLE SIX

ACCOUNTS AND RECORDS

6.1 Accounting. The Trustee shall maintain records and accounts of all investments, receipts and disbursements. Such records of the Trustee shall be open to the inspection of the



1 Depositor and the United States, or their authorized representa-  
2 tives at all reasonable times. As soon as possible following the  
3 close of each month, the Trustee shall provide, to the Depositor  
4 Cities and the Secretary of Interior or his designee, a statement  
5 of activities, including deposits, disbursements and earnings, a  
6 copy of any requests for payment received and a statement of the  
7 balances in the Fund.

## 8 ARTICLE SEVEN

### 9 FIDUCIARY RESPONSIBILITY OF THE TRUSTEE

10 7.1 Scope of Duties. The duties and obligations of the  
11 Trustee acting as Trustee hereunder shall be strictly limited to  
12 those expressly imposed upon the Trustee by this Trust Agreement  
13 and by applicable law. The Trustee shall not be required to give  
14 bond for the performance of the Trustee's duties. All persons  
15 dealing with the Trustee are released from inquiry into the de-  
16 cision or authority of the Trustee and from seeing to the appli-  
17 cation of any monies, securities or other property paid or  
18 delivered to the Trustee. The exercise by the Trustee of any ex-  
19 press or implied discretion pursuant to this Trust Agreement shall  
20 be conclusive and binding upon the parties to this Agreement, but  
21 the Trustee shall have the right to reconsider and redetermine such  
22 actions. The Trustee shall not be liable for the distribution of  
23 any part of the Fund if distributions are made in accordance with  
24 and pursuant to this Trust Agreement, as herein provided. The  
25 Trustee may recoup reasonable administrative costs, which shall be  
26 billed to the Depositor Cities.

1       7.2 Communications. Any notice or directions to the Trustee  
2 from a Depositor City shall be in writing signed by or on behalf of  
3 the Depositor City or by its duly authorized representative and  
4 delivered to the Trustee. The Trustee shall be responsible only  
5 for such notices or directions as are actually received by the  
6 Trustee. The Trustee shall incur no liability in acting upon any  
7 such notice or direction reasonably believed by the Trustee to be  
8 genuine and to have been signed by the proper person(s). The  
9 Trustee shall send a copy of any notice or direction received from  
10 a Depositor City to all other Depositor Cities and the Secretary of  
11 Interior or his designee.

12                   **ARTICLE EIGHT**

13                   **AMENDMENT AND TERMINATION OF THE TRUST**

14       8.1 Amendment. The Depositor Cities shall have the right at  
15 any time by a duly authorized instrument in writing, duly executed  
16 by all Depositor Cities and delivered to the Trustee, to modify,  
17 alter or amend this Trust Agreement, in whole or in part, prospec-  
18 tively; provided, however, that if the amendment increases or  
19 significantly affects the duties, powers and liabilities of the  
20 Trustee hereunder, the Trust Agreement may be amended only with the  
21 Trustee's prior written consent.

22       8.2 Termination. The Trust created pursuant to this Trust  
23 Agreement may be terminated only upon (a) the payment to the United  
24 States of the amount due for the purchase of water rights and re-  
25 lated expenses in accordance with the Settlement Agreement;  
26 (b) termination of the Settlement Agreement; (c) upon mutual agree-

1 ment by the Depositor Cities and the Secretary of Interior of the  
2 United States; or (d) as to an individual Depositor, if the  
3 Depositor's interest is terminated pursuant to the terms of the  
4 Curing Agreement. In the event a request for payment from the  
5 United States has not been received by the Trustee by December 31,  
6 1991, or in the event of a termination of the Settlement Agreement,  
7 all monies remaining in a Depositor's account or in a Curing Ac-  
8 count established by a Depositor, including any accrued earnings,  
9 shall be returned to the Depositor within thirty (30) days from  
10 December 31, 1991, or from the date the Depositor Cities and the  
11 United States jointly notify the Trustee, in writing, of the termi-  
12 nation of the Settlement Agreement, whichever first occurs. When  
13 the Fund has been so distributed, the Trustee shall be released and  
14 discharged from all further accountability or liability respecting  
15 the Fund and shall not be responsible in any way to any person for  
16 the further disposition of the Fund. If monies remain in the  
17 Depositors' accounts or in any Curing Accounts in the Fund after  
18 the required payment to the United States has been made, such  
19 monies shall be returned to the Depositors within thirty (30) days  
20 of the date of disbursement of monies to the United States.

## 21 ARTICLE NINE

### 22 MISCELLANEOUS

23 9.1 Governing Law; Construction. This Trust Agreement shall  
24 be administered, construed and enforced in accordance with the laws  
25 of the State of Arizona. Throughout this Trust Agreement certain  
26 defined terms, identified by capitalization, are used. Such terms

1 shall have the meanings described to them by this Trust Agreement  
2 and the Settlement Agreement. When the context permits, words used  
3 in the singular in this Trust Agreement shall include the plural  
4 and the plural shall include the singular. Headings and sub-  
5 headings in this Trust Agreement are for reference only and are not  
6 to be considered in the construction of this Trust Agreement. If  
7 any provision of this Trust Agreement is determined to be for any  
8 reason invalid or unenforceable, then, at the option of the  
9 Depositor Cities and the Trustee, the invalid or unenforceable  
10 provisions shall be deemed stricken and the remaining provisions of  
11 this Trust Agreement shall continue in full force and effect.

12 9.2 Cancellation and Arbitration. This Agreement is subject  
13 to arbitration to the extent required by Section 12-1518, Arizona  
14 Revised Statutes, as it may be amended from time to time, and the  
15 cancellation requirements of Section 38-511, Arizona Revised  
16 Statutes, as it may be amended from time to time; provided that in  
17 the event of cancellation as provided herein, all monies remaining  
18 in the fund shall be returned to the Depositors by the Trustee on  
19 the effective date of cancellation.

20 9.3 Record Keeping. This Agreement is subject to retention  
21 of books and record-keeping to the extent required by Section 35-  
22 214, Arizona Revised Statutes.

23 IN WITNESS WHEREOF, the parties hereto have caused this TRUST  
24 AGREEMENT FOR THE SRPMIC WATER RIGHTS SETTLEMENT TRUST FUND to be

25 . . .

26 . . .

executed by their duly authorized representatives on the date first  
above written.

## TRUSTEE:

STATE OF ARIZONA

By Ray Pottas  
State Treasurer

## DEPOSITORS:

CITY OF PHOENIX, a Municipal  
corporation MARVIN A. ANDREWS,  
City Manager

## ATTEST:

Vice Mayor

## APPROVED AS TO FORM:

[Signature]  
City AttorneyBy [Signature]

## ATTEST:

Mark C. Mayo  
City Clerk

## APPROVED AS TO FORM:

Barbara R. Goldberg  
City Attorney

CITY OF SCOTTSDALE

By [Signature]  
Mayor

## ATTEST:

Jauergone Behm  
City Clerk

## APPROVED AS TO FORM:

[Signature]  
City Attorney

CITY OF GLENDALE

By [Signature]  
Mayor

CITY OF MESA

By \_\_\_\_\_  
City Manager

City Manager

CITY OF TEMPE

By John  
Mayor

Mayor

City Attorney

TOWN OF GILBERT

By \_\_\_\_\_  
Mayor

Mayor

CITY OF CHANDLER

By Per  
Mayor

Mayor

City Attorney

EXHIBIT A

Depositors' Resolutions

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ORDINANCE NO. S 1 8 8 2 2

AN ORDINANCE OF THE COUNCIL OF THE CITY OF PHOENIX, ARIZONA, AUTHORIZING THE CITY MANAGER TO ENTER INTO, EXECUTE, DELIVER AND PERFORM AN AGREEMENT BETWEEN THE UNITED STATES, STATE OF ARIZONA, THE SALT RIVER PIMA-MARICOPA INDIAN COMMUNITY (SRPMIC), THE CENTRAL ARIZONA WATER CONSERVATION DISTRICT (CAWCD), THE SALT RIVER PROJECT AGRICULTURAL IMPROVEMENT AND POWER DISTRICT AND THE SALT RIVER VALLEY WATER USERS ASSOCIATION (SRP), THE ROOSEVELT WATER CONSERVATION DISTRICT (RWCD), THE ROOSEVELT IRRIGATION DISTRICT (RID) AND THE ARIZONA CITIES OF CHANDLER, GLENDALE, MESA, PHOENIX, SCOTTSDALE, TEMPE AND THE ARIZONA TOWN OF GILBERT PERTAINING TO THE SETTLEMENT OF WATER RIGHTS OF THE SALT RIVER PIMA-MARICOPA INDIAN COMMUNITY AND ITS MEMBERS AND TO RESOLVE PENDING LITIGATION ON WATER RIGHTS; AUTHORIZING THE CITY MANAGER OR HIS DESIGNEE TO ENTER INTO, EXECUTE AND PERFORM ALL DOCUMENTS RELATED THERETO INCLUDING BUT NOT LIMITED TO A COLORADO RIVER WATER EXCHANGE AGREEMENT BETWEEN THE UNITED STATES, CAWCD AND THE CITY OF PHOENIX, A WATER EXCHANGE AGREEMENT BETWEEN RID, CITY OF PHOENIX, SRPMIC AND SRP, A PROJECT WATER LEASE AGREEMENT BETWEEN THE UNITED STATES, THE SALT RIVER PIMA-MARICOPA INDIAN COMMUNITY AND THE CITY OF PHOENIX; AN ASSIGNMENT AGREEMENT BETWEEN THE UNITED STATES, CAWCD, RWCD, CHANDLER, GLENDALE, SCOTTSDALE, TEMPE, MESA, PHOENIX AND TOWN OF GILBERT, A TRUST AGREEMENT BETWEEN PHOENIX, SCOTTSDALE, GLENDALE, MESA, TEMPE, CHANDLER, TOWN OF GILBERT AND THE STATE OF ARIZONA AND A CURING AGREEMENT BETWEEN CHANDLER, GLENDALE, SCOTTSDALE, TEMPE, MESA, PHOENIX AND THE TOWN OF GILBERT; AUTHORIZING THE CITY ATTORNEY TO EXECUTE A STIPULATION IN THE GENERAL ADJUDICATION OF THE GILA RIVER SYSTEM; AUTHORIZING THE CITY CONTROLLER TO DISBURSE ALL NECESSARY FUNDS AS PROVIDED BY THE



TERMS OF SAID SETTLEMENT AGREEMENT AND DOCUMENTS RELATED THERETO; AUTHORIZING THE MAYOR OF THE CITY OF PHOENIX TO AFFIX HIS SIGNATURE TO THE SALT RIVER PIMA-MARICOPA INDIAN COMMUNITY WATER RIGHTS SETTLEMENT AGREEMENT; PROVIDING FOR THE AMENDMENT OF ORDINANCE NO. S-17523, AND DECLARING AN EMERGENCY.

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WHEREAS, the continued development of the City of Phoenix, being dependent upon reliable allocation of Arizona's water resources, has been threatened by the assertion by substantial water rights claims by the Salt River Pima-Maricopa Indian Community which are the subject of pending litigation in the Arizona State and Federal Courts; and

WHEREAS, the City of Phoenix recognizes that the resolution of these conflicts must recognize long standing vested water rights arising under State law, Federal Law, the Kent Decree and through contractual relationships with the Salt River Valley Water Users' Association, the Salt River Project Agricultural Improvement and Power District and the United States. The City of Phoenix also desires that the settlement of pending water rights claims accommodate the imperative need of the City of Phoenix to satisfy increasing municipal and industrial water demands; and

WHEREAS, it is a reasonable expectation of the City of Phoenix that the Salt River Pima-Maricopa Indian Community

Water Rights Settlement Agreement authorized herein will permanently settle the water rights of the Salt River Pima-Maricopa Indian Community, its members, and the owners of allotted lands within the Salt River Pima-Maricopa Indian Community's reservation and finally resolve pending litigation on water rights and damage claims.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF PHOENIX as follows:

SECTION 1. That the City Manager or his designee be, and is hereby, authorized to enter into, execute and perform the Salt River Pima-Maricopa Indian Community Water Rights Settlement Agreement between the United States of America, the State of Arizona, the Salt River Pima-Maricopa Indian Community hereinafter referred to as "SRPMIC", the Salt River Project Agricultural Improvement and Power District and the Salt River Valley Water Users' Association hereinafter collectively referred to as "SRP", the Roosevelt Water Conservation District hereinafter referred to as "RWCD", the Roosevelt Irrigation District hereinafter referred to as RID, the Arizona cities of Chandler, Glendale, Mesa, Phoenix, Scottsdale and Tempe, and the Arizona Town of Gilbert, and the Central Arizona Water Conservation District hereinafter referred to as "CAWCD". The SRPMIC Water Rights Settlement Agreement will be substantially in the respective proposed

form attached hereto with such additions, deletions and modifications as shall be approved by the City Attorney, and upon execution on behalf of the City and such approval, shall constitute conclusive evidence of the approval and execution on behalf of the City of Phoenix, and of this Council's approval of any departures thereto from the respective form hereto attached.

SECTION 2. That the City Manager or his designee be, and is hereby, authorized to enter into, execute and perform the River Water Exchange Contract which is an agreement among the United States of America, CAWCD and the City of Phoenix providing for the delivery of 5,000 acre feet of Colorado River water per year through the Central Arizona Project facilities to the City of Phoenix for the purposes of facilitating an exchange of water with the SRPMIC. The River Water Exchange Contract will be substantially in the respective proposed form hereto attached with such additions, deletions and modifications as shall be approved by the City Attorney, and upon execution on behalf of the City, and such approval, shall constitute conclusive evidence of the approval and execution on behalf of the City and of this Council's approval of any departure thereof from the respective form attached hereto.

SECTION 3. That the City Manager or his designee be, and he is hereby authorized to enter into, execute and perform an agreement between the City of Phoenix, RID, SRP and SRPMIC providing for the reuse of reclaim effluent and a three way exchange of water to their mutual benefit hereinafter referred to as "RID, City of Phoenix, SRPMIC, and SRP Water Exchange Agreement." The RID, City of Phoenix, SRPMIC and SRP Water Exchange Agreement will be substantially in the respective proposed form hereto attached with such additions, deletions and modifications as shall be approved by the City Attorney, and upon execution on behalf of the City and such approval shall constitute conclusive evidence of the approval and execution on behalf of the City, and of this Council's approval of any departures thereof from the respective form hereto attached.

SECTION 4. That the City Manager or his designee be and he is hereby authorized to enter into, execute and perform a Project Water Lease Agreement between the United States of America, the SRPMIC and the City of Phoenix providing for the lease to the City of Phoenix of SRPMIC's right, title and interest under their CAP Delivery Contract to 3,023 acre feet of Project Water hereinafter referred to as "Project Water Lease Agreement." The Project Water Lease Agreement will be substantially in the respective proposed form attached hereto

with such additions, deletions and modifications as shall be approved by the City Attorney, and upon execution on behalf of the City and such approval, shall constitute conclusive evidence of the approval and the execution on behalf of the City of Phoenix, and this Council's approval of any departures thereof from the respective form hereto attached.

SECTION 5. That the City Manager or his designee be and he is hereby authorized to enter into, execute and perform an Assignment Agreement between the United States, CAWCD, RWCD, Chandler, Glendale, Scottsdale, Tempe, Mesa, Phoenix and the Town of Gilbert providing for the assignment by RWCD to the Cities and Town participating in the SRPMIC Water Rights Settlement Agreement of a portion of the agricultural water available to RWCD from the CAP, and further providing for the Secretary of the Interior, in certain events, to make available to such Cities and Town a portion of the agricultural water supply otherwise available from the CAP, such Assignment Agreement hereinafter referred to as "RWCD Assignment to Cities". The RWCD Assignment to Cities will be substantially in the respective proposed form attached hereto with such additions, deletions and modifications as shall be approved by the City Attorney, and upon execution on behalf of the City and such approval, shall constitute conclusive evidence of the approval and the execution on behalf of the

City of Phoenix, and this Council's approval of any departures thereof from the respective form hereto attached.

SECTION 6. That the City Manager or his designee be and he is hereby authorized to enter into, execute and perform a Trust Agreement between the Cities of Phoenix, Scottsdale, Glendale, Mesa, Tempe and Chandler and the Town of Gilbert and the State Treasurer of the State of Arizona, providing for the establishment of an escrow account to be held in trust for the purposes outlined in the SRPMIC Water Rights Settlement Agreement and River Water Exchange Contract, hereinafter referred to as "Trust Agreement". The Trust Agreement will be substantially in the respective proposed form attached hereto with such additions, deletions and modifications as shall be approved by the City Attorney, and upon execution on behalf of the City and such approval, shall constitute conclusive evidence of the approval and the execution on behalf of the City of Phoenix, and this Council's approval of any departures thereof from the respective form hereto attached.

SECTION 7. That the City Manager or his designee be and he is hereby authorized to enter into, execute and perform a Curing Agreement between the Cities of Chandler, Glendale, Scottsdale, Tempe, Mesa, Phoenix and the Town of Gilbert providing for a procedure for the voluntary curing of any City's default under the SRPMIC Water Rights Settlement

Agreement of its obligation to make payments into the escrow described in such Settlement Agreement or such City's obligation to make lease payments as providing in such Settlement Agreement. The Curing Agreement will be substantially in the respective proposed form attached hereto with such additions, deletions and modifications as shall be approved by the City Attorney, and upon execution on behalf of the City and such approval, shall constitute conclusive evidence of the approval and the execution on behalf of the City of Phoenix, and this Council's approval of any departures thereof from the respective form hereto attached.

SECTION 8. That the City Attorney or his designee be and he is hereby authorized to execute a Stipulation in the General Adjudication of all Rights to use water in the Gila River System and Source, W-1; W-2; W-3; W-4, the objective of which is to resolve all outstanding water-related litigation and settle once and for always the water rights of the SRPMIC, and its members, and the owners of allotted lands with the Salt River-Maricopa Indian Reservation. The Stipulation will be substantially in the respective proposed form attached hereto with such additions, deletions and modifications as shall be approved by the City Attorney, and upon execution by the City Attorney on behalf of the City shall constitute conclusive evidence of the approval and the execution on

behalf of the City of Phoenix, and this Council's approval of any departures thereof from the respective form hereto attached.

SECTION 9. The City Manager or his designee, or the City Attorney or his designee as appropriate, be and they are hereby authorized to enter into, execute and perform on behalf of the City such additional agreements, exhibits, and stipulations, as are deemed by the City Manager to be necessary and appropriate in order to implement and effectuate the SRPMIC Water Rights Settlement Agreement, the River Water Exchange Contract, the RID, City of Phoenix, SRPMIC and SRP Water Exchange Agreement, the Project Water Lease Agreement, the RWCD Assignment to Cities, the Trust Agreement, the Curing Agreement and the Stipulation.

SECTION 10. The City Comptroller be and he is hereby authorized to disburse all necessary funds as provided by the terms of the SRPMIC Water Rights Settlement Agreement, the River Water Exchange Contract, the RID, City of Phoenix, SRPMIC and SRP Water Exchange Agreement, the Project Water Lease Agreement, the RWCD Assignment to Cities, the Trust Agreement, the Curing Agreement and the Stipulation and such additional agreements, exhibits and stipulations as are deemed by the City Manager necessary and appropriate to implement and effectuate such agreements.



SECTION 11. That the Mayor of the City of Phoenix be and he is authorized to affix his signature to the SRPMIC Water Rights Settlement Agreement.

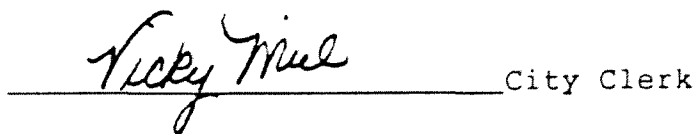
SECTION 12. That Ordinance No. S-17523 passed by the City Council on December 22, 1987, pertaining to the authorization to execute the SRPMIC Water Rights Settlement Agreements and Exhibits attached thereto be and the same is hereby amended to conform to the provisions of this Ordinance.

SECTION 13. WHEREAS, the immediate operation of the provisions of this Ordinance is necessary for the preservation of the public peace, health and safety, an EMERGENCY is hereby declared to exist, and this Ordinance shall be in full force and effect from and after its passage by the Council as required by the City Charter and is hereby exempted from the referendum clause of said Charter.

PASSED by the Council of the City of Phoenix this  
27 day of SEPTEMBER, 1989.

  
MAYOR

ATTEST:

  
City Clerk

APPROVED AS TO FORM:

[Signature] ACTING  
City Attorney

REVIEWED BY:

[Signature] ASSISTANT  
City Manager

STATE OF ARIZONA }  
COUNTY OF MARICOPA } SS SPECIAL DEPUTY  
I, ANGIE CASTRO, City Clerk of the City  
of Phoenix, County of Maricopa, State of Arizona, do  
hereby certify and attest the foregoing to be a full,  
true and correct copy of ~~Resolution~~ <sup>Ordinance</sup> NO. 18822 of the  
City of Phoenix, Arizona, as adopted by the City  
Council of the City of Phoenix at a ~~Special~~ <sup>Regular</sup> Meeting  
held on the 27 day of Sept, 1989, all as  
appears of record in my office.

IN WITNESS WHEREOF, I have hereunto set my  
hand and caused the official seal of the City of  
Phoenix to be affixed hereunto this 10th day of

Oct, 1989  
Angie Castro  
SPECIAL DEPUTY City Clerk

247

JWS:cz;0033D  
9/27/89;10



Scottsdale City Council  
Herbert R. Drinkwater, Mayor  
Susan Bitter Smith  
Sam Kathryn Campana  
Ross Dean  
Myron R. Deibel  
Bill Soderquist  
Bill Walton



Mark G. Mazzie  
City Clerk

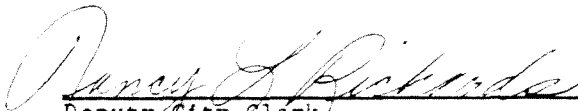
### City Clerk's Office

*"Your Source For Voter Information and Public Records"*

STATE OF ARIZONA       )  
                                      )  
COUNTY OF MARICOPA    )

I, Nancy L. Richards, Deputy City Clerk of the City of Scottsdale, County of Maricopa, State of Arizona, do hereby certify and attest the foregoing to be a full, true and correct copy of Resolution No. 3116 of the City of Scottsdale, Arizona as adopted by the City Council of the City of Scottsdale at a Regular meeting held on the 19th day of December, 1988.

IN WITNESS WHEREOF, I have hereto set my hand and caused the official seal of the City of Scottsdale to be affixed hereunto this 18th day of September, 1989.

  
Deputy City Clerk

RESOLUTION NO. 3115

A RESOLUTION OF THE COUNCIL OF THE CITY OF SCOTTSDALE, MARICOPA COUNTY, ARIZONA, AUTHORIZING THE MAYOR TO ENTER INTO, EXECUTE, DELIVER AND PERFORM THE SALT RIVER PIMA-MARICOPA INDIAN COMMUNITY WATER RIGHTS SETTLEMENT AGREEMENT AMONG THE UNITED STATES OF AMERICA, THE CENTRAL ARIZONA WATER CONSERVATION DISTRICT, THE SALT RIVER PIMA-MARICOPA INDIAN COMMUNITY, SALT RIVER VALLEY WATER USERS ASSOCIATION, SALT RIVER PROJECT AGRICULTURAL IMPROVEMENT AND POWER DISTRICT, ROOSEVELT WATER CONSERVATION DISTRICT, THE ARIZONA CITIES OF PHOENIX, SCOTTSDALE, GILDALE, MESA, TAPER, CHANDLER, AND THE TOWN OF GILBERT, IN SETTLEMENT OF PENDING LITIGATION.

WHEREAS, the statutes of the State of Arizona authorize two or more public agencies to enter into agreement for services or to jointly exercise common powers; and

WHEREAS, the Charter of the City of Scottsdale authorizes the City to enter into intergovernmental agreements; and

WHEREAS, the City of Scottsdale is a defendant in the following lawsuits:

1. Salt River Pima-Maricopa Indian Community v. United States, et al., CIV 82-745 PHX RGS, United States District Court for the District of Arizona; and
2. Salt River Pima-Maricopa Indian Community v. F.S. Aguilar, et al., CIV 82-2162 PHX RGR, United States District Court for the District of Arizona; and
3. United States of America on Behalf of Salt River Pima-Maricopa Indian Community v. City of Phoenix, et al., CIV 82-2173 PHX WPC, United States District Court for the District of Arizona;

WHEREAS, the City of Scottsdale is a water rights claimant in the General Adjudication of All Rights to Use Water in the Gila River System and Source, W-1; W-2; W-3; W-4, wherein the Salt River Pima-Maricopa Indian Community (SRPIMC) has made substantial claims of rights to water; and

WHEREAS, the City, along with the above-named parties, recognizes that continued development of the Salt River Valley, being dependent upon reliable allocation of Arizona's water resources, has been jeopardized by the assertion of substantial water right and damage claims by SRPIMC, but also recognizes that any settlement of these conflicts must recognize long-standing vested water rights and accommodate the need of cities to satisfy increasing water demands; and

WHEREAS, the above-named parties desire to settle and quantify the water rights claims of the SRPIMC, to avoid further litigation, and to confirm certain other rights of the parties in accordance

with the terms of the Salt River Pima-Maricopa Indian Community Water Rights Settlement Agreement (the "Agreement"); and

WHEREAS, under the terms of the Agreement, SRPMIC will dismiss the three lawsuits identified as numbers 1-3 above and will stipulate that the Agreement fully satisfies and quantifies its claims in the Gila River Adjudication litigation; and

WHEREAS, the Agreement supercedes Intergovernmental Agreement No. 870353 approved by the Scottsdale City Council on November 30, 1987; and

WHEREAS, the parties desire to execute the Agreement and obtain the signature of the Secretary of Interior prior to the change in administration at the federal level so as to avoid any delays in federal approval or implementation of the Agreement, it is necessary that this Resolution be adopted as an emergency measure.

NOW THEREFORE, LET IT BE RESOLVED by the Council of the City of Scottsdale as follows:

Section 1. That the Mayor, or his designee, is hereby authorized to enter into, execute and perform the Salt River Pima-Maricopa Indian Community Water Rights Settlement Agreement between the United States of America, the Central Arizona Water Conservation District, the Salt River Pima-Maricopa Indian Community, the Salt River Water Users Association, the Salt River Project Agricultural Improvement and Power District, the Roosevelt Water Conservation District, the Roosevelt Irrigation District, the Arizona cities of Phoenix, Scottsdale, Glendale, Mesa, Tempe, Chandler and Town of Gilbert. The Agreement will be substantially in the proposed form hereto attached with such additions, deletions and modifications as shall be approved by the City Attorney. Execution by the Mayor on behalf of the City and approval by the City Attorney shall constitute conclusive evidence of the approval and the execution on behalf of the City and of this Council's approval of any departures from the form attached.

Section 2. All elected officials, officers and agents of the City are authorized and empowered within the scope of their powers granted by charter and law to perform the Agreement.

Section 3. The Mayor or his designee is hereby authorized to enter into, execute and perform on behalf of the City such additional agreements, exhibits, or other documents as are necessary and appropriate in order to implement and effectuate the Agreement.

Section 4. The immediate operation of the provisions of this Resolution is necessary in order to assure speedy execution of the Agreement by the United States and prompt implementation of the Agreement. There is, therefore, declared to exist an emergency, and the provisions of this Resolution shall become effective upon its passage and adoption by the City Council as provided in the charter of the City.

PASSED AND ADOPTED by the Council of the City of Scottsdale,  
Maricopa County, Arizona, this 19th day of December, 1988.

ATTEST:

Richard A. Bowers

City Clerk

*Richard A. Bowers*  
By: Deputy City Clerk

Approved as to form:

*Thomas J. Wilson*  
Thomas J. Wilson  
City Attorney

CITY OF SCOTTSDALE

A Municipal Corporation

By:

*Harbert R. Brunkwater*  
Harbert R. Brunkwater  
Mayor





RESOLUTION NO. 2531 NEW SERIES

A RESOLUTION OF THE COUNCIL OF THE CITY OF GLENDALE, MARICOPA COUNTY, ARIZONA, AUTHORIZING AND DIRECTING THE ENTERING INTO OF THE SALT RIVER PIMA-MARICOPA INDIAN COMMUNITY WATER RIGHTS SETTLEMENT AGREEMENT; AND AUTHORIZING DEPOSIT OF MONIES IN SALT RIVER PIMA-MARICOPA INDIAN COMMUNITY CITY EXCHANGE TRUST FUND.

WHEREAS, Section 7(d) of Public Law 100-512; Section 12.14 of the Salt River Pima-Maricopa Indian Community Water Rights Settlement Agreement ("the SRP-MIC Agreement") dated as of February 1988; and Exhibit 12.14 of the SRP-MIC Agreement entitled "Trust Agreement" provide for the establishment of an escrow account for deposit of monies for the purchase of rights to 22,000 acre feet of annual consumptive use of water from the mainstream of the Colorado River pursuant to Exhibit 3(h) of the SRP-MIC Agreement entitled "River Water Exchange Contract"; and

WHEREAS, the Trust Agreement provides for the State Treasurer to be the Trustee for such escrow account; and

WHEREAS, the City of Glendale desires to utilize the State Treasurer's services as Trustee.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF GLENDALE as follows:

SECTION 1. That the Mayor and City Clerk are hereby authorized and directed to execute and deliver the SRP-MIC Agreement along with all exhibits and any and all necessary documents on behalf of the City of Glendale.

SECTION 2. That the City Council of the City of Glendale does hereby authorize the deposit of monies in the Salt River Pima-Maricopa Indian Community City Exchange Trust Fund to be administered by the State Treasurer as Trustee, in accordance with the Trust Agreement.

SECTION 3. That the following officers/agents or their successors in office be authorized to order the deposit of monies in the Salt River Pima-Maricopa Indian Community City Exchange Trust Fund:

<u>Gordon L. Pedrow</u>	<u>Asst. City Manager</u>
(Name)	(Title)

<u>Kenneth E. Martin</u>	<u>City Treasurer</u>
(Name)	(Title)

<u>Lavergne Behm</u>	<u>City Clerk</u>
(Name)	(Title)

<u>Linda Duke</u>	<u>Asst. City Clerk</u>
(Name)	(Title)

PASSED, ADOPTED AND APPROVED by the Mayor and Council of the City of Glendale, Maricopa County, Arizona, this 17th day of October, 1989.

GEORGE R. RENNER

M A Y O R

ATTEST:

LAVERGNE BEHM

City Clerk (SEAL)

APPROVED AS TO FORM:

PETER VAN HAREN

City Attorney

REVIEWED BY:

MARTIN VANACOUR

City Manager

STATE OF ARIZONA     )  
County of Maricopa   ) ss.  
City of Glendale     )

I, the undersigned, Lavergne Behm, being the duly appointed, qualified and acting City Clerk of the City of Glendale, Maricopa County, Arizona, certify that the foregoing Resolution No. 2531 New Series, is a true, correct and accurate copy of Resolution No. 2531 New Series, passed and adopted at a special meeting of the Council of the City of Glendale, held on the 17th day of October, 1989, at which a quorum was present and voted in favor of said Resolution.

Given under my hand and seal this 17th day of October, 1989.

(SEAL)

Lavergne Behm  
City Clerk





# *Certificate of CITY CLERK*

I, SHARON EGGERS, THE DULY APPOINTED, QUALIFIED AND ACTING CITY CLERK OF THE **CITY OF MESA**, MARICOPA COUNTY, ARIZONA, DO HEREBY CERTIFY THAT THE ATTACHED COPY OF RESOLUTION NO. 5933, ENTITLED:

RESOLUTION NO. 5933

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MESA, MARICOPA COUNTY, ARIZONA, APPROVING AND AUTHORIZING THE CITY MANAGER TO EXECUTE A SETTLEMENT AGREEMENT WITH THE SALT RIVER PIMA-MARICOPA INDIAN COMMUNITY

IS A TRUE, CORRECT AND COMPARED COPY OF THE ORIGINAL OF RECORD, AND ON FILE IN THE OFFICE OF THE CITY CLERK OF THE **CITY OF MESA**, ARIZONA.

IN WITNESS WHEREOF, I HAVE HEREUNTO SET MY HAND AND SEAL OF THE **CITY OF MESA**, MARICOPA COUNTY, STATE OF ARIZONA, THIS 17TH DAY OF OCTOBER, 1989.



  
SHARON EGGERS  
CITY CLERK

RESOLUTION NO. 5933

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MESA, MARICOPA COUNTY, ARIZONA, APPROVING AND AUTHORIZING THE CITY MANAGER TO EXECUTE A SETTLEMENT AGREEMENT WITH THE SALT RIVER PIMA-MARICOPA INDIAN COMMUNITY.

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MESA, MARICOPA COUNTY, ARIZONA, AS FOLLOWS:

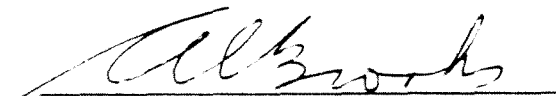
Section 1: That the Settlement Agreement among the City of Mesa, the Salt River Pima-Maricopa Indian Community, the Roosevelt Water Conservation District, the United States of America, the State of Arizona, the Salt River Project Agricultural Improvement and Power District and other state and local agencies is hereby approved.

Section 2: That the City Manager is authorized and directed to execute the Agreement on behalf of the City of Mesa, and the City Clerk is authorized and directed to attest to the signature of the City Manager thereon.


PASSED AND ADOPTED by the City Council of the City of Mesa, Maricopa County, Arizona, this 7th day of December, 1987.



APPROVED:

  
Mayor

ATTEST:

  
City Clerk



Resolution 89.73

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF TEMPE, ARIZONA APPROVING THE SALT RIVER PIMA - MARICOPA INDIAN COMMUNITY WATER RIGHTS SETTLEMENT AGREEMENT AMONG THE UNITED STATES OF AMERICA, THE STATE OF ARIZONA, THE SALT RIVER PIMA - MARICOPA INDIAN COMMUNITY, THE SALT RIVER PROJECT AGRICULTURAL IMPROVEMENT AND POWER DISTRICT, THE SALT RIVER VALLEY WATER USERS' ASSOCIATION, THE ROOSEVELT WATER CONSERVATION DISTRICT, THE ROOSEVELT IRRIGATION DISTRICT, THE CENTRAL ARIZONA WATER CONSERVATION DISTRICT, THE TOWN OF GILBERT AND THE CITIES OF CHANDLER, GLENDALE, MESA, PHOENIX, SCOTTSDALE AND TEMPE.

WHEREAS, the continued development and economic well-being of the City of Tempe is dependent on a reliable and sufficient water supply; and,

WHEREAS, the City of Tempe's rights to the water from the Salt River have been jeopardized by the assertion of substantial water rights claims by the Salt River Pima - Maricopa Indian Community; and,

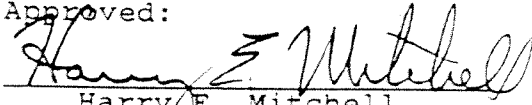
WHEREAS, the representatives of the United States of America, the State of Arizona, the Salt River Pima - Maricopa Indian Community, the Salt River Valley Water Users' Association, the Salt River Project Agricultural Improvement and Power District, the Roosevelt Water Conservation District, the Roosevelt Irrigation District, the Central Arizona Water Conservation District, the Town of Gilbert and the Cities of Chandler, Glendale, Mesa, Phoenix, Scottsdale and Tempe have agreed to permanently settle the water rights of the Salt River Pima - Maricopa Indian Community and its members, to finally resolve pending litigation on water rights and damage claims and to seek funding for implementation of the settlement; and,

WHEREAS, the proposed settlement recognizes the City of Tempe's long-standing vested water rights and will not harm the City of Tempe's ability to satisfy increasing water demands;


NOW, THEREFORE, BE IT RESOLVED, that the City Council of the City of Tempe, Arizona does hereby approve the Salt River Pima - Maricopa Indian Community Water Rights Settlement Agreement and all pertinent stipulations and subsidiary agreements thereto.

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF TEMPE, ARIZONA, this 14th day of September, 1989.

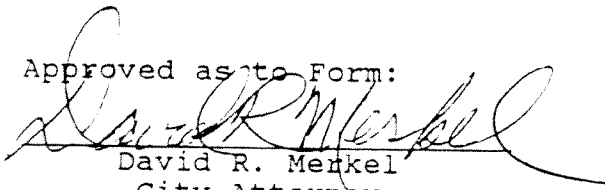
Approved:

  
Harry E. Mitchell  
Mayor

Attest:


  
Helen R. Fowler  
City Clerk

Approved as to Form:

  
David R. Merkel  
City Attorney

I, Helen R. Fowler, the duly appointed City Clerk of the City of Tempe, Maricopa County, Arizona, do hereby certify the attached to be true and exact copy of Resolution No. 89.73, passed and adopted at the Regular Council Meeting of September 14, 1989, by the Tempe City Council, Tempe, Arizona.

DATED this 27th day of September, 1989.

  
Helen R. Fowler, CMC  
City Clerk



Res. 89.73



P.O. BOX 1547 • MESA, ARIZONA 85211

RECEIVED  
SEP 25 1989  
CITY CLERK

P. O. Number: \_\_\_\_\_

Invoice Number: 989223

## AFFIDAVIT OF PUBLICATION

STATE OF ARIZONA  
County of Maricopa

I, SUE GREEN, Legal Clerk,

acknowledge that the attached hereto was  
published in a newspaper of general circulation at  
Mesa, Arizona, County of Maricopa on the  
following dates:

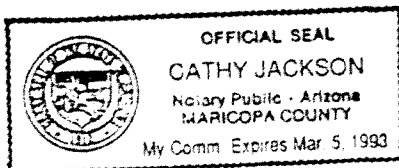
09/20 1989

T  
M—Mesa T—Tempe C—Chandler

LEGAL CLERK

Subscribed and sworn to before me this  
date: 20-SEP-89

NOTARY PUBLIC

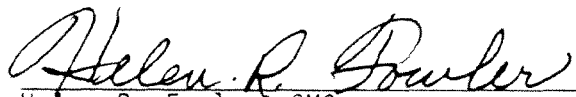


CITY OF TEMPE  
RESOLUTION NO. 89.73  
A RESOLUTION OF THE CITY  
COUNCIL OF THE CITY OF TEMPE,  
ARIZONA, APPROVING THE  
SALT RIVER PIMA - MARICOPA  
INDIAN COMMUNITY WATER  
RIGHTS SETTLEMENT AGREEMENT  
AMONG THE UNITED  
STATES OF AMERICA, THE STATE  
OF ARIZONA, THE SALT RIVER  
PIMA - MARICOPA INDIAN  
COMMUNITY, THE SALT RIVER  
PROJECT AGRICULTURAL  
IMPROVEMENT AND POWER  
DISTRICT, THE SALT RIVER VAL-  
LEY WATER USERS' ASSOCIA-  
TION, THE ROOSEVELT WATER  
CONSERVATION DISTRICT, THE  
ROOSEVELT IRRIGATION DIS-  
TRICT, THE CENTRAL ARIZONA  
WATER CONSERVATION DIS-  
TRICT, THE TOWN OF GILBERT  
AND THE CITIES OF CHANDLER,  
GLENDALE, MESA, PHOENIX,  
SCOTTSDALE AND TEMPE.  
WHEREAS, the continued devel-  
opment and economic well-being  
of the City of Tempe is depend-  
ent on a reliable and sufficient  
water supply; and  
WHEREAS, the City of Tempe's  
rights to the water from the Salt  
River have been jeopardized by  
the assertion of substantial  
water rights claims by the Salt  
River Pima - Maricopa Indian  
Community; and,  
WHEREAS, this representatives  
of the United States of America,  
the State of Arizona, the Salt  
River Pima - Maricopa Indian  
Community, the Salt River Valley  
Water Users' Association, the  
Salt River Project Agricultural  
Improvement and Power District,  
the Roosevelt Water Conserva-  
tion District, the Roosevelt Irriga-  
tion District, the Central Arizona  
Water Conservation District, the  
Town of Gilbert and the Cities of  
Chandler, Glendale, Mesa, Pho-  
enix, Scottsdale and Tempe have  
agreed to permanently settle the  
water rights of the Salt River  
Pima - Maricopa Indian Commu-  
nity and its members, to finally  
resolve pending litigation on  
water rights and damage claims  
and to seek funding for imple-  
mentation of the settlement;  
and,  
WHEREAS, the proposed settle-  
ment recognizes the City of  
Tempe's long-standing vested  
water rights and will not harm  
the City of Tempe's ability to  
satisfy increasing water  
demands;

27.21

I, Helen R. Fowler, the City Clerk of the City of Tempe, Maricopa County, Arizona, do hereby certify the attached to be a true and exact copy of Resolution No. 89.74 adopted at the Tempe City Council Meeting of September 14, 1989, City of Tempe, Maricopa County, Arizona.

DATED this 20th day of September, 1989

  
Helen R. Fowler, CMC  
City Clerk

Resolution 89.74

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF TEMPE, ARIZONA  
APPROVING THE ESTABLISHMENT OF THE SALT RIVER PIMA - MARICOPA  
INDIAN COMMUNITY CITY EXCHANGE TRUST FUND.

WHEREAS, the City Council of the City of Tempe has approved the  
Salt River Pima - Maricopa Indian Community Water Rights  
Settlement Agreement; and,

WHEREAS, the Settlement Agreement requires the City of Tempe to  
cede one hundred acre-feet per year of its Salt River water  
allotment to the Indian Community; and,

WHEREAS, the United States of America has agreed to acquire a  
sufficient amount of Colorado River water to replace the Salt  
River water the City of Tempe will cede to the Indian Community;  
and,

WHEREAS, the City of Tempe has agreed to fund \$40,500 of the cost  
of acquiring the replacement Colorado River water; and,

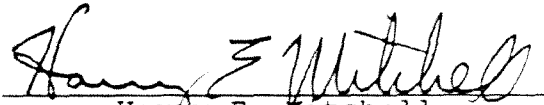
WHEREAS, the Settlement Agreement provides for the establishment  
of an escrow account to be known as the SRPMIC City Exchange  
Trust Fund to be used to carry out the River Water Exchange; and,

WHEREAS, the State Treasurer of Arizona has agreed to hold,  
administer and invest the Trust Fund in accordance with the  
provisions of the trust agreement;

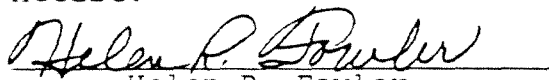
NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF  
TEMPE, ARIZONA,

that the TRUST AGREEMENT FOR THE SALT RIVER PIMA - MARICOPA  
INDIAN COMMUNITY TRUST FUND is approved and a deposit of \$40,500  
is to the fund is authorized to be made prior to October 20,  
1989.

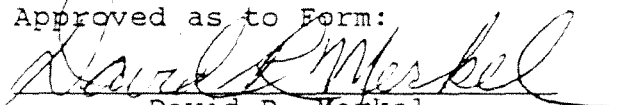
Passed and adopted by the City Council of the City of Tempe,  
Arizona this 14th day of September, 1989.

  
Harry E. Mitchell  
Mayor

Attest:

  
Helen R. Fowler  
City Clerk

Approved as to Form:

  
David R. Merkel  
City Attorney

Resolution 89.75

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF TEMPE, ARIZONA APPROVING THE CURING AGREEMENT AMONG THE CITIES OF CHANDLER, GLENDALE, MESA, PHOENIX, SCOTTSDALE, TEMPE AND THE TOWN OF GILBERT.

WHEREAS, the cities of Chandler, Glendale, Mesa, Phoenix, Scottsdale, Tempe and the town of Gilbert (cities) have agreed to execute the Salt River Pima - Maricopa Indian Community Water Rights Settlement Agreement; and,

WHEREAS, the Settlement Agreement requires the cities to deposit certain sums into an escrow account for the acquisition of water rights for the River Water Exchange; and,

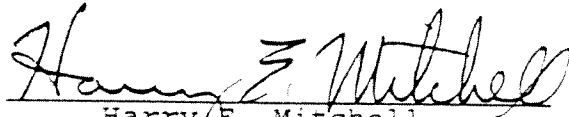
WHEREAS, the Settlement Agreement gives each of the cities the right to lease a portion of the Salt River Pima - Maricopa Indian Community's Central Arizona Project water allocation; and,

WHEREAS, a procedure should be provided for the voluntary curing of any city's default of its obligation to make payments into the escrow account or its obligation to make the lease payments described above;


NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF TEMPE, ARIZONA,

the CURING AGREEMENT AMONG THE CITIES OF CHANDLER, GLENDALE, SCOTTSDALE, TEMPE, MESA, PHOENIX AND THE TOWN OF GILBERT which is ancillary to the Salt - River Pima - Maricopa Indian Community Water Rights Settlement is approved.

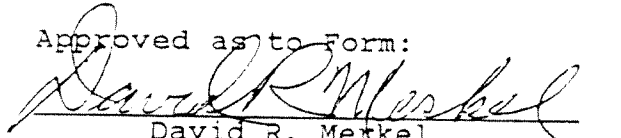
Passed and adopted by the City Council of the City of Tempe,  
Arizona this 14th day of September, 1989.

  
Harry E. Mitchell  
Mayor

Attest:

  
Helen R. Fowler  
City Clerk

Approved as to Form:

  
David R. Merkel  
City Attorney

I, Helen R. Fowler, the duly appointed City Clerk of the City of Tempe,  
Maricopa County, Arizona, do hereby certify the attached to be a true  
and exact copy of Resolution No. 89.75, passed and adopted at the  
Regular Council Meeting of September 14, 1989, by the Tempe City Council,  
Tempe, Arizona.

DATED this 27th day of September, 1989.

  
Helen R. Fowler, CMC  
City Clerk

Kes. 89. 75



P.O. BOX 1547 • MESA, ARIZONA 85211

RECEIVED

SEP 25 1989

CITY CLERK

P. O. Number: \_\_\_\_\_

Invoice Number: 989229

AFFIDAVIT OF PUBLICATION

STATE OF ARIZONA

County of Maricopa

I, SUE GREEN, Legal Clerk,

acknowledge that the attached hereto was published in a newspaper of general circulation at Mesa, Arizona, County of Maricopa on the following dates:

09/20 1989

T

M—Mesa

T—Tempe

C—Chandler

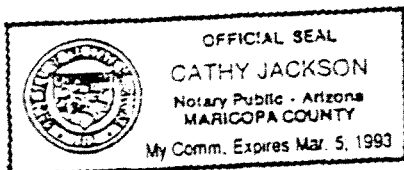
*Sue Green*

LEGAL CLERK

Subscribed and sworn to before me this date: 20-SEP-89

*Cathy Jackson*

NOTARY PUBLIC



CITY OF TEMPE  
RESOLUTION NO. 89.75  
A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF TEMPE, ARIZONA APPROVING THE CURING AGREEMENT AMONG THE CITIES OF CHANDLER, GLENDALE, MESA, PHOENIX, SCOTTSDALE, TEMPE AND THE TOWN OF GILBERT.  
WHEREAS, the cities of Chandler, Glendale, Mesa, Phoenix, Scottsdale, Tempe and the town of Gilbert (cities) have agreed to execute the Salt River Pima - Maricopa Indian Community Water Rights Settlement Agreement; and,  
WHEREAS, the Settlement Agreement requires the cities to deposit certain sums into an escrow account for the acquisition of water rights for the River Water Exchange; and,  
WHEREAS, the Settlement Agreement gives each of the cities the right to lease a portion of the Salt River Pima - Maricopa Indian Community's Central Arizona Project water allocation; and,  
WHEREAS, a procedure should be provided for the voluntary curing of any city's default of its obligation to make payments into the escrow account or its obligation to make the lease payments described above;  
NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF TEMPE, ARIZONA,  
THE CURING AGREEMENT AMONG THE CITIES OF CHANDLER, GLENDALE, SCOTTSDALE, TEMPE, MESA, PHOENIX AND THE TOWN OF GILBERT which is ancillary to the Salt River Pima - Maricopa Indian Community Water Rights Settlement is approved.  
Passed and adopted by the City Council of the City of Tempe, Arizona this 14th day of September, 1989.

*/s/ Harry E. Mitchell*  
Mayor

Attest  
*/s/ Helen R. Fowler*  
City Clerk

Approved as to form:  
*/s/ David R. Merkley*  
City Attorney

Pub Sept 20, 1989 T-989229

18.66





*Debbie Acoberty* 9/28/89  
Town Clerk Date

RESOLUTION NO. 1046

A RESOLUTION OF THE COMMON COUNCIL OF THE TOWN OF GILBERT, ARIZONA, AUTHORIZING THE MAYOR TO EXECUTE THAT CERTAIN AGREEMENT ENTITLED THE "SALT RIVER PIMA-MARICOPA INDIAN COMMUNITY WATER RIGHTS SETTLEMENT AGREEMENT; AUTHORIZING THE MAYOR TO EXECUTE THAT CERTAIN AGREEMENT ENTITLED THE "CURING AGREEMENT AMONG THE CITIES OF CHANDLER, GLENDALE, SCOTTSDALE, TEMPE, MESA, PHOENIX AND THE TOWN OF GILBERT"; AUTHORIZING THE DISBURSEMENT OF FUNDS PURSUANT TO THAT CERTAIN DOCUMENT ENTITLED THE "TRUST AGREEMENT"; AND DECLARING AN EMERGENCY.

WHEREAS, the Town of Gilbert, the City of Chandler, the City of Tempe, the City of Mesa, the City of Glendale, the City of Scottsdale, the City of Phoenix, the Roosevelt Irrigation District, the Roosevelt Water Conservation District, the Salt River Project Agricultural Improvement & Power District, the Salt River Valley Water Users' Association, the Salt River Pima-Maricopa Indian Community, the Central Arizona Water Conservation District, the State of Arizona, and the United States of America, have reached agreement to resolve certain claims made by the Salt River Pima-Maricopa Indian Community and its members as well as other non-Indian claims, which are the subject of extensive and complex litigation pending in Arizona state and federal courts; and

WHEREAS, the Common Council of the Town of Gilbert, Arizona, finds that the execution of the Salt River Pima-Maricopa Indian Community Water Rights Settlement Agreement, together with all its exhibits, including, but not limited to, the related Curing Agreement among the Cities of Chandler, Glendale, Scottsdale, Tempe, Mesa, Phoenix, and the Town of Gilbert, is in the best interest of the Town in securing for the Town a substantially more reliable allocation of Arizona's water resources;


NOW, THEREFORE, BE IT RESOLVED by the Mayor and Common Council of the Town of Gilbert, that the Mayor be and hereby is authorized to execute that certain Agreement entitled the "Salt River Pima-Maricopa Indian Community Water Rights Settlement Agreement", together with the exhibits thereto (hereafter the "Settlement Agreement");

BE IT FURTHER RESOLVED, that the Mayor be and hereby is authorized to execute that certain document entitled the "Curing Agreement among the Cities of Chandler, Glendale, Scottsdale, Tempe, Mesa, Phoenix, and the Town of Gilbert", to ensure that the Town of Gilbert may, at its discretion, cure the default of any of the above-listed Cities as necessary to avoid default of certain provisions under the Settlement Agreement;

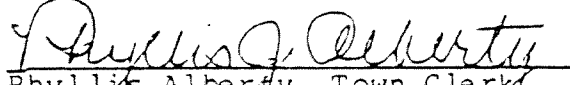
BE IT FURTHER RESOLVED, that in furtherance of the Settlement Agreement, the Town Manager or duly authorized representative, be and hereby is authorized to disburse funds for deposit with the State Treasurer of the State of Arizona pursuant to the Trust Agreement, which Trust Agreement is Exhibit 12.14 of the Settlement Agreement, no later than October 20, 1989 in an amount not to exceed \$2,765,700.00 and to take such further actions as may be necessary and proper under the Settlement Agreement and the Curing Agreement.

WHEREAS, the immediate operation of the provisions of this Resolution is necessary for the preservation of the public peace, health and safety of the Town of Gilbert and an emergency is hereby declared to exist. This Resolution shall be in full force and effect from and after its passage, adoption or approval by the Common Council of the Town of Gilbert.

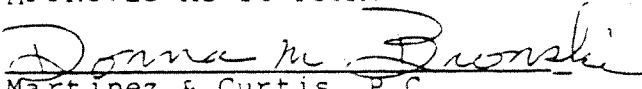
PASSED AND ADOPTED by the Common Council of the Town of Gilbert, Maricopa County, Arizona, this 19 day of September 1989.

  
Steven M. Berman, Mayor

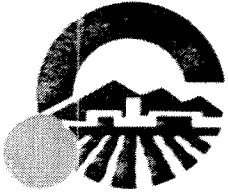
ATTEST:

  
Phyllis Alberty, Town Clerk

APPROVED AS TO FORM:

  
Martinez & Curtis, P.C.  
Town Attorneys  
By Donna M. Bronski





CITY OF CHANDLER  
Office of the City Clerk

C E R T I F I C A T I O N

I, Carolyn Dunn, the duly appointed and Acting City Clerk of the City of Chandler, Arizona, DO HEREBY CERTIFY that the attached Resolution No. 1621 dated December 3, 1987, "Appoving Water Rights Settlement With the Salt River Pima-Maricopa Indian Community" is a true and correct copy of the original document of record and on file in the office of the City Clerk.

Dated: September 26, 1989

Carolyn Dunn  
CITY CLERK

S E A L

RESOLUTION NO. 1621

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CHANDLER, ARIZONA, APPROVING WATER RIGHTS SETTLEMENT AGREEMENT WITH THE SALT RIVER PIMA-MARICOPA INDIAN COMMUNITY.

WHEREAS, the City of Chandler has been a party to negotiations among the Salt River Pima-Maricopa Indian Community (SRPMIC), the United States of America, the State of Arizona, the Salt River Project, the Roosevelt Irrigation District, the Roosevelt Water Conservation District, and the Cities of Glendale, Mesa, Phoenix, Scottsdale and Tempe, and the Town of Gilbert seeking to clarify the extent of water rights belonging to the SRPMIC; and,

WHEREAS, these negotiations have culminated in a proposed "Water Rights Settlement Agreement" resolving all outstanding water-related litigation and water right claims by providing to the SRPMIC 122,400 acre-feet of water sufficient to irrigate approximately 27,200 acres of SRPMIC land and sufficient funds to permit development of SRPMIC agricultural and commercial facilities and activities; and,

WHEREAS, the best interests of the City of Chandler will be served by entering into the proposed "Agreement";

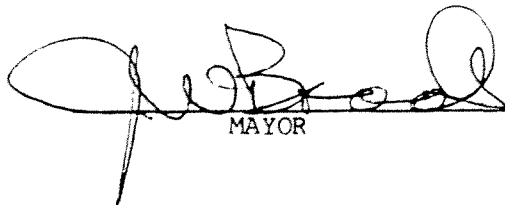
NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Chandler, Arizona, as follows:

1. That the proposed "Water Rights Settlement Agreement" with the Salt River-Pima-Maricopa Indian Community is hereby approved; and
2. The Mayor is hereby authorized to execute said "Agreement".

APPROVED, PASSED AND ADOPTED by the City Council of the City of Chandler, Arizona, this 3rd day of Dec., 1987.

ATTEST:

  
Brenda Brinkley  
DEPUTY CITY CLERK

  
MAYOR

APPROVED AS TO FORM:

  
Maurine R. George  
CITY ATTORNEY

C-E-R-T-I-F-I-C-A-T-I-O-N

I HEREBY CERTIFY that the above and foregoing Resolution No. 1621 was duly approved, passed and adopted by the City Council of the City of Chandler, Arizona, at a regular meeting held on the 3rd day of December, 1987, and that a quorum was present thereat.

Beverly Brady  
acting DEPUTY CITY CLERK

## EXHIBIT B

Mailing Addresses  
of  
Parties to the Settlement Agreement

As to the United States  
of America

Secretary of the Interior  
Department of the Interior  
18th and C Streets, N.W.  
Washington, D.C. 20240

Area Director  
Phoenix Area Office  
Bureau of Indian Affairs  
Post Office Box 10  
Phoenix, Arizona 85001

Regional Director  
Bureau of Reclamation  
Lower Colorado Region  
Post Office Box 427  
Boulder City, Nevada 89005

As to the State of Arizona:

Office of the Governor  
1700 West Washington  
Phoenix, Arizona 85007

As to the Salt River Pima-  
Maricopa Indian Community:

Salt River Pima-Maricopa  
Indian Community  
Route 1, Box 216  
Scottsdale, Arizona 85256  
Attention: Community Manager

As to the Central Arizona  
Water Conservation  
District:

Central Arizona Water Conservation  
District  
23636 North Seventh Street  
Phoenix, Arizona 85024  
Attention: General Manager

As to the Salt River  
Project:

Salt River Project  
Post Office Box 52025  
Phoenix, Arizona 85072-2025  
Attention: General Manager

As to the Roosevelt Water  
Conservation District:

Roosevelt Water Conservation  
District  
Post Office Box 168  
Higley, Arizona 85236  
Attention: General Manager

1 As to the Roosevelt  
2 Irrigation District: Roosevelt Irrigation District  
3 Post Office Box 95  
4 Buckeye, Arizona 85236  
5 Attention: Superintendent

6 As to the City of Phoenix: City of Phoenix  
7 251 West Washington  
8 Phoenix, Arizona 85003  
9 Attention: City Manager

10 As to the City of  
11 Scottsdale City of Scottsdale  
12 3939 Civic Center Plaza  
13 Scottsdale, Arizona 85251  
14 Attention: City Manager

15 As to the City of Glendale: City of Glendale  
16 5850 West Glendale Avenue  
17 Glendale, Arizona 85301  
18 Attention: City Manager

19 As to the City of Mesa: City of Mesa  
20 55 North Center Street  
21 Post Office Box 1466  
22 Mesa, Arizona 85201  
23 Attention: City Manager

24 As to the City of Tempe: City of Tempe  
25 31 East 5th Street  
26 Tempe, Arizona 85281  
Attention: City Manager

As to the City of Chandler: City of Chandler  
Suite 304  
25 South Arizona Place  
Chandler, Arizona 85225  
Attention: City Manager

As to the Town of Gilbert: Town of Gilbert  
119 North Gilbert Road  
Gilbert, Arizona 85234  
Attention: Town Manager



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EXHIBIT C  
Curling Agreement



CURING AGREEMENT AMONG THE CITIES OF CHANDLER, GLENDALE,  
SCOTTSDALE, TEMPE, MESA, PHOENIX AND THE TOWN OF GILBERT

PARTIES.

The Parties to this Agreement are the Arizona Cities of Chandler, Glendale, Scottsdale, Tempe, Mesa, Phoenix and the Arizona Town of Gilbert, Arizona municipal corporations, hereinafter collectively referred to as "Cities".

RECITALS.

1. The Parties hereto intend to execute or will execute simultaneously an agreement entitled "Salt River Pima-Maricopa Indian Community Water Rights Settlement Agreement" dated as of February, 1988 (hereinafter referred to as the "Settlement Agreement").

2. As provided in Paragraph 12.14 of the Settlement Agreement, each of the Parties to this Curing Agreement have agreed that within one year after the date of enactment of the Salt River Pima-Maricopa Indian Community Water Rights Settlement Act of 1988, they are to deposit certain sums into an escrow account for the acquisition of water rights for the River Water Exchange described in Paragraph 12.0 of the Settlement Agreement.

3. As provided in Paragraph 19.0 of the Settlement Agreement, each of the Parties to this Curing Agreement have acquired the right to lease a portion of the Salt River Pima-Maricopa Indian Community's Central Arizona Project water allocation from the Community. In exercising this right, each City may elect one of three options in structuring its lease

payments. The options allow a City to make its entire payment up front or to make installment payments over a number of years.

4. The Parties hereto desire to provide a procedure for the voluntary curing of any City's default under the Settlement Agreement of its obligation to make payments into the escrow account described in Paragraph 2 above or its obligation to make lease payments described in Paragraph 3 above.

NOW, THEREFORE, IN CONSIDERATION of the respective rights, privileges, and obligations of the Parties hereafter set forth, it is agreed as follows:

1. Effective Date and Relationship to the Settlement Agreement.

1.1 This Curing Agreement shall be effective and binding upon the Parties that execute it when it has been executed by all Parties hereto and upon execution of the Settlement Agreement by all Parties thereto. Provided, however, this Curing Agreement is ancillary to the Settlement Agreement, and its Exhibits shall be construed where possible in harmony with the terms of the Settlement Agreement and its Exhibits; in the event of an irreconcilable difference between the terms of this Curing Agreement and the terms of the Settlement Agreement and its Exhibits, the terms of the Settlement Agreement and its Exhibits shall control.

1.2 The obligations to make payments referred to in this Agreement are governed by the Settlement Agreement. The purpose of this Curing Agreement is to define the rights of the

Cities in the event of a Default or prospective Default by a City of its obligations under the Settlement Agreement.

2. Definitions.

2.1 Except as otherwise provided in this Curing Agreement, the definitions set forth in the Settlement Agreement shall apply.

2.2 Cure shall mean to make payments of all or any portion of any payment (including any late charges and interest) due or to become due from any Defaulting City under Paragraphs 12.0 or 19.0 of the Settlement Agreement.

2.3 Curing City shall mean any Non-Defaulting City which elects to Cure.

2.4 Default shall mean the failure of a Party hereto to deposit monies into an escrow account described in Paragraph 12.0 of the Settlement Agreement or to make any lease payments required by Paragraph 19.0 of the Settlement Agreement. The date of the Default shall be the due date of the amount owed, as set forth in the Settlement Agreement and its Exhibits.

2.5 Defaulting City shall mean any Party in Default.

2.6 Non-Defaulting City shall mean any Party other than a Defaulting City.

3. Right to Cure - River Water Exchange.

3.1 Each City represents and agrees that it will make its respective payment required under Paragraph 12.0 of the Settlement Agreement. Each City represents and agrees that it will provide a statement to each other City from each respective

City's Chief Financial Officer that sufficient funds are available to meet its respective obligation under Paragraph 12.0 of the Settlement Agreement and that such funds have been restricted for this purpose. Such statement shall conform substantially to the terms contained in Exhibit 1 attached hereto and shall be delivered to those persons and in the manner provided in Paragraph 5 hereof no later than October 6, 1989.

3.2 In the event a Party reasonably anticipates it will default in making its payment into the escrow account pursuant to Paragraph 12.14 of the Settlement Agreement, and such Party cannot in good faith provide the statement required by Paragraph 3.1 hereof, such Party shall promptly give written notice, but in no event later than October 6, 1989, of such prospective Default to each of the Parties to this Curing Agreement.

3.3 Each Non-Defaulting City shall have the right to cure a prospective Default of a Defaulting City's obligations to make the payment into the escrow account required pursuant to Paragraph 12.14 of the Settlement Agreement. If more than one Non-Defaulting City wishes to cure a prospective Default of a Defaulting City, each Non-Defaulting City shall have a right to cure in accordance with the following formula:

Step 1. Determine the amount of prospective Default in dollars.

Step 2. Determine each Curing City's initial percentage as provided in Paragraph 12.14 of the Settlement Agreement.

Step 3. Determine the sum of all Curing Cities' initial percentages as provided in Paragraph 12.14 of the Settlement Agreement.

Step 4. Divide each Curing City's initial percentage by the sum of all Curing Cities' initial percentages.

Step 5. Multiply the amounts determined in Step 4 by 100 to determine each Curing City's percentage right to cure.

Step 6. Multiply the percentages determined in Step 5 by the dollar amount determined in Step 1.

3.4 A Non-Defaulting City who cures or partially cures a prospective Default shall succeed to the rights of the Defaulting City set forth in Paragraph 12.0 of the Settlement Agreement, to the extent of its contribution to the Cure, subject to the rights of a Defaulting City set forth in Paragraph 3.5.

3.5 Prior to the expiration of ten (10) days after the Default, the Defaulting City may reimburse the Curing City or Cities the amount paid by the Curing City or Cities and such payment shall restore such Defaulting City to the status of a Non-Defaulting City for purposes of this Curing Agreement. Failure of a Defaulting City to make such payment within ten (10) days shall extinguish the Defaulting City's rights in the River Water Exchange described in Paragraph 12.0 of the Settlement Agreement. A Defaulting City which makes payment as allowed by this paragraph shall also pay the Curing City or Cities an amount

equal to the Curing City or Cities' costs incurred in effecting and preparing to effect a Cure including legal costs, foregone interest, and cost of funds borrowed to make such payment.

3.6 A Defaulting City whose rights in the River Water Exchange have been extinguished pursuant to Paragraph 3.5 above hereby assigns to the Curing City or Cities its corresponding rights and obligations in the CAP Water Lease described in Paragraph 19.0 of the Settlement Agreement, it being the specific intent of the Parties hereto that upon default of the obligation to deposit monies in an escrow account for the River Water Exchange and subsequent Cure by another City, each Party's percent of participation in the CAP Water Lease described in Paragraph 19.0 of the Settlement Agreement be the same as each Party's percent of participation in the River Water Exchange described in Paragraph 12.0 of the Settlement Agreement. In the event any further documents are required, a Defaulting City shall execute any and all documents required to effectuate such assignment.

4. Right to Cure - Central Arizona Project Water Lease.

4.1 Each City represents and agrees that it will make its respective Central Arizona Project Water Lease payment or payments required under Paragraph 19.0 of the Settlement Agreement. Each City represents and agrees that it will provide a statement to each other City from each respective City's Chief Financial Officer stating (i) that City's election of payment schedule required by Paragraph 19.1 of the Settlement Agreement, (ii) that sufficient funds are available to make the payment due



on the enforceability date and that such funds have been restricted for this purpose; and such notice shall be given as soon as is practicable after the enforceability date has been determined, and (iii) for those Cities electing to pay annual installments pursuant to Paragraph 19.1, a statement shall issue annually, sixty (60) days before the due date of each installment payment, stating that sufficient funds are available to make such payment and have been restricted for the purpose of making such payment. Statements required to be issued by this Paragraph shall be delivered to those persons and in the manner provided in Paragraph 5 hereof.

4.2 In the event a Party reasonably anticipates it will default in making any CAP Water Lease payment pursuant to Paragraph 19.1 of the Settlement Agreement, and such Party cannot in good faith provide any of the Statements required by Paragraph 4.1 hereof, such Party shall promptly give written notice of such prospective Default to each of the Parties to this Curing Agreement no later than sixty (60) days prior to the date such payment is due.

4.3 Each Non-Defaulting City shall have the right to cure a prospective Default of a Defaulting City prior to an actual Default in making a Lease payment when due, in accordance with Paragraphs 4.3 and 4.4. If more than one Non-Defaulting City wishes to cure a prospective Default of a Defaulting City, each Non-Defaulting City shall have a right to cure in accordance with the following formula:

Step 1. Determine the amount of the prospective Default in dollars.

Step 2. Determine each Curing City's initial percentage as provided in Paragraph 19.6 of the Settlement Agreement.

Step 3. Determine the sum of all Curing Cities' initial percentages as provided in Paragraph 19.6 of the Settlement Agreement.

Step 4. Divide each Curing City's initial percentage by the sum of all Curing Cities' initial percentages.

Step 5. Multiply the amounts determined in Step 4 by 100 to determine each Curing City's percentage right to cure.

Step 6. Multiply the percentages determined in Step 5 by the dollar amount determined in Step 1.

4.4 A Non-Defaulting City who cures or partially cures a prospective Default shall succeed to the rights of the Defaulting City set forth in Paragraph 19.0 of the Settlement Agreement to the extent of its contribution to the Cure, subject to the rights of a Defaulting City set forth in Paragraph 4.5 hereof.

4.5 Nothing in Paragraphs 4.1, 4.2, 4.3 or 4.4 herein shall affect the rights of a Defaulting City, a Curing City or the Lessor in any Project Water Lease Agreement entered into pursuant to Paragraph 19.0 of the Settlement Agreement to declare a Default

or to cure a Default following receipt of a Notice of Default pursuant to Paragraph 4.5 of a Project Water Lease Agreement. The rights of a Defaulting City, a Curing City and the Lessor in a Project Water Lease Agreement upon Default shall be as set forth in Paragraph 4.2 of each City's respective Project Water Lease Agreement.

4.6 An extinguishment of the rights of a Defaulting City under Paragraph 19.0 of the Settlement Agreement pursuant to Paragraph 4.5 above shall not affect the Defaulting City's rights and obligations under the River Water Exchange described in Paragraph 12.0 of the Settlement Agreement.

5. Notices. All notices to be given under this Agreement shall be in writing and shall be deemed to have been duly given if hand-delivered to the Party or Parties to whom it is given or if mailed postage prepaid, certified mail, return receipt requested to the Party or Parties to whom notice is given at the following addresses:

City of Chandler  
25 South Arizona Place  
Chandler, Arizona 85225

ATTENTION: City Manager

City of Glendale  
5850 West Glendale Avenue  
Glendale, Arizona 85301

ATTENTION: City Manager

. . .  
. . .  
. . .

City of Scottsdale  
3939 Civic Center Plaza  
Scottsdale, Arizona 85251

ATTENTION: City Manager

City of Tempe  
31 East Fifth Street  
Tempe, Arizona 85281

ATTENTION: City Manager

City of Mesa  
55 North Center Street  
Post Office Box 1466  
Mesa, Arizona 85201

ATTENTION: City Manager

City of Phoenix  
251 West Washington Street  
Phoenix, Arizona 85003

ATTENTION: City Manager

Town of Gilbert  
119 North Gilbert Road  
Gilbert, Arizona 85234

ATTENTION: Town Manager

Any Party may change the address to which notices are to be sent by notice in writing to the other Parties in accordance with this Paragraph.

6. Right of Action for Reimbursement. A City which elects to cure under Paragraph 3.3 or 4.3 of this Agreement may bring suit for reimbursement pursuant to this Paragraph. Upon making payment of all or any portion of any payment due from a Defaulting City, each Curing City shall have an immediate right of action in Arizona Superior Court to obtain reimbursement from the Defaulting City of the amount paid by the Curing City, plus interest on that amount from the date of payment by the Curing

City at the rate of twelve percent (12%) per annum, reasonable attorneys' fees, expert witness fees and cost of suit. In the event a Defaulting City is required by court order to reimburse a Curing City or Cities amounts paid by such Curing City or Cities, including interest and costs, as set forth herein, the Defaulting City shall, upon making such reimbursement, be restored to the status quo ante prior to the Default with respect to its rights and obligations affected by the Default.

7. Time is of the Essence. Time is of the essence under this Curing Agreement.

8. Modification and Waiver. No modification or amendment to this Curing Agreement shall be effective unless in writing and signed by the Parties hereto. No waiver shall be effective unless in writing and signed by the Party against whom enforcement of the waiver is sought.

9. Headings. The headings in this Curing Agreement have been inserted for convenience only and shall not affect the meaning or interpretation of any provisions of this Curing Agreement.

10. Governing Law. This Curing Agreement shall be governed by and construed in accordance with the laws of the State of Arizona.

11. Counterparts. This Curing Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which shall constitute one instrument.

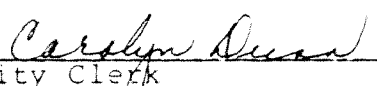
12. No Third Party Beneficiaries. Nothing in this Curing Agreement, express or implied, shall confer any rights or remedies under or by reason of this Curing Agreement on any persons or entities other than the Parties to it.

IN WITNESS WHEREOF, the Parties hereto have executed this Curing Agreement on the 20th day of OCTOBER, 1989, this date being the date all Parties have executed this Agreement.

CITY OF CHANDLER

By 

ATTEST:

  
City Clerk

APPROVED AS TO FORM:

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

CITY OF GLENDALE

By 

ATTEST:

  
City Clerk

APPROVED AS TO FORM:

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

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By

City Clerk

City Attorney

City Clerk

City Attorney

By

By

City Clerk

City Attorney

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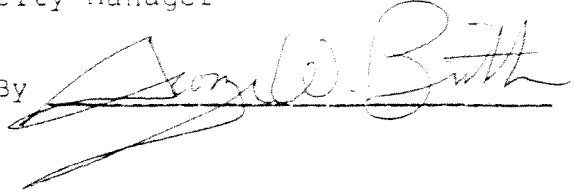
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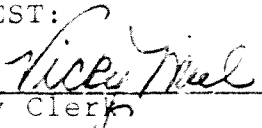
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City of Phoenix,  
a Municipal Corporation  
MARVIN A. ANDREWS,  
City Manager

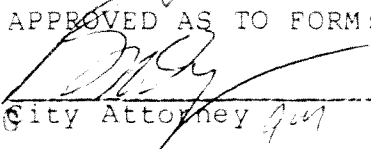
By



ATTEST:

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

APPROVED AS TO FORM:

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

TOWN OF GILBERT

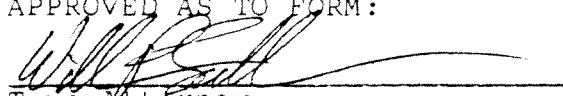
By

\_\_\_\_\_

ATTEST:

  
\_\_\_\_\_  
Town Clerk

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Town Attorney



**EXHIBIT I**

**to the  
CURING AGREEMENT  
intentionally omitted**

EXHIBIT "21.6"

Salt River Pima-Maricopa Indian  
Community Water Rights Settlement Act of 1988

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Public Law 100-512  
100th Congress

An Act

To provide for the settlement of the water rights claims of the Salt River Pima-Maricopa Indian Community in Maricopa County, Arizona, and for other purposes.

Oct. 20, 1988

[H.R. 4102]

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

SECTION 1. SHORT TITLE.

This Act may be cited as the "Salt River Pima-Maricopa Indian Community Water Rights Settlement Act of 1988".

SEC. 2. CONGRESSIONAL FINDINGS.

(a) The Congress finds and declares that—

(1) it is the policy of the United States, in fulfillment of its trust responsibility to Indian tribes, to promote Indian self-determination and economic self-sufficiency, and to settle, wherever possible, the water rights claims of Indian tribes without lengthy and costly litigation;

(2) meaningful Indian self-determination and economic self-sufficiency largely depend on development of viable Indian reservation economies;

(3) quantification of rights to water and development of facilities needed to utilize tribal water supplies effectively is essential to the development of viable Indian reservation economies, particularly in arid western States;

(4) on June 14, 1879, the United States Government established a reservation for the Salt River Pima-Maricopa Indian Community in Maricopa County, Arizona, at the confluence of the Salt and Verde Rivers tributary to the Gila River;

(5) the United States, as trustee for the Community, obtained water entitlements for the Community pursuant to the Kent Decree of 1910 and the Bartlett Dam Agreement of 1935; however, continued uncertainty as to the full extent of the Community's entitlement to water has severely limited the Community's access to the water and financial resources necessary to develop its valuable agricultural lands and frustrated its efforts to reduce its dependence on Federal program funding and achieve meaningful self-determination and economic self-sufficiency;

(6) litigation to determine the full extent and nature of the Community's water rights and those of its allotted land owners, and damages thereto, is currently pending before the United States District Court in Arizona and in the United States Claims Court. The United States, as trustee for the Community, also has filed claims for the Community's water rights in the General Adjudication of the Gila River System and Source currently pending in the Superior Court of the State of Arizona in and for the County of Maricopa;

Salt River  
Pima-Maricopa  
Indian  
Community  
Water  
Rights  
Settlement Act  
of 1988.  
Public lands.

(7) recognizing that final resolution of pending litigation will take many years and entail great expense to all parties, continue economically and socially damaging limits to the Community's access to water, prolong uncertainty as to the availability of water supplies and seriously impair the long-term economic planning and development of all parties, the Community and neighboring non-Indian communities have sought to settle their disputes to water and reduce the burdens of litigation;

(8) after more than two years of negotiations, which included participation by representatives of the United States Government, the Community and neighboring non-Indian communities of the Salt River Valley, who all are party to the General Adjudication of the Gila River System and Source, the parties have entered into an agreement to resolve all water rights claims between and among themselves, to quantify the Community's entitlement to water, to provide for the orderly development of the Community's lands, and to prescribe a procedure for resolving such remaining claims which the Community and its allottees may have against the United States;

(9) pursuant to the agreement, the neighboring non-Indian communities will transfer rights to approximately thirty-two thousand acre-feet of surface water to the Community, provide for the means of firming existing water supplies of the Community, and make substantial additional contributions to carry out the agreement's provisions; and

(10) to advance the goals of Federal Indian policy and to fulfill the trust responsibility of the United States to the Community, it is appropriate that the United States participate in the implementation of the agreement and contribute funds for the rehabilitation and expansion of existing reservation irrigation facilities so as to enable the Community to utilize fully its water entitlements in developing a diverse, efficient reservation economy.

(b) Therefore, it is the purpose of this Act (1) to approve, ratify and confirm the agreement entered into by the Community and its neighboring non-Indian communities, (2) to authorize and direct the Secretary to execute and perform such agreement, and (3) to authorize the actions and appropriations necessary for the United States to fulfill its legal and trust obligations to the Community as provided in the agreement and this Act.

### SEC. 3. DEFINITIONS.

For the purposes of this Act—

(a) "Agreement" means that agreement dated February 12, 1988, among the Salt River Pima Maricopa Indian Community; the State of Arizona; the Salt River Project Agricultural Improvement and Power District; the Salt River Valley Water Users' Association; the Roosevelt Water Conservation District; the Roosevelt Irrigation District; the Arizona cities of Chandler, Glendale, Mesa, Phoenix, Scottsdale, and Tempe, and the Arizona town of Gilbert; and the Central Arizona Water Conservation District, together with all exhibits thereto.

(b) "Allottees" means owners of allotted land within the Salt River Pima-Maricopa Indian Reservation.

(c) "Bartlett Dam Agreement" means the agreement between the United States and the Salt River Valley Water Users'

Association dated June 3, 1935, relating to Verde River storage works.

(d) "CAP" means the Central Arizona Project, a reclamation project authorized under title III of the Colorado River Basin Project Act of 1968 (43 U.S.C. 1521 et seq.).

(e) "CAWCD" means the Central Arizona Water Conservation District, organized under the laws of the State of Arizona, which is the contractor under a contract with the United States, dated December 15, 1972, for the delivery of water and repayment of costs of the Central Arizona Project.

(f) "Community" means the Salt River Pima-Maricopa Indian Community, a community of Pima and Maricopa Indians organized pursuant to Section 16 of the Indian Reorganization Act of June 18, 1934 (25 U.S.C. 461 et seq.).

(g) "Kent Decree" means the decree dated March 1, 1910, entered in Patrick T. Hurley versus Charles F. Abbott, and others, Case Numbered 4564, in the District Court of the Third Judicial District of the Territory of Arizona, in and for the County of Maricopa, and all decrees supplemental thereto.

(h) "Plan 6 Agreement" means the agreement among the United States; the CAWCD; the Flood Control District of Maricopa County; SRP; the Arizona cities of Chandler, Glendale, Mesa, Phoenix, Scottsdale, and Tempe; the State of Arizona; and the City of Tucson, for funding of Plan 6 facilities of the CAP, and for other purposes, dated April 15, 1986, together with Exhibits A, B, C, and D thereto.

(i) "RID" means the Roosevelt Irrigation District, an irrigation district organized under the laws of Arizona.

(j) "RWCD" means the Roosevelt Water Conservation District, an irrigation district organized under the laws of the State of Arizona.

(k) "Secretary" means the Secretary of the United States Department of the Interior.

(l) "SRP" means the Salt River Project Agricultural Improvement and Power District, a political subdivision of the State of Arizona, and the Salt River Valley Water Users' Association, an Arizona corporation.

#### SEC. 4. KENT DECREE REREGULATION.

(a) The Secretary is authorized and directed to designate seven thousand acre-feet (hereinafter referred to as "Designated Space") of the additional active conservation capacity which will result from the modifications to Roosevelt Dam on the Salt River previously authorized by the Reclamation Safety of Dams Act of 1978, as amended (43 U.S.C. 506 et seq.), the Colorado River Basin Project Act of 1968 (43 U.S.C. 1501 et seq.), and the relevant provisions relating to "Construction Program" contained in title II of the Act making appropriations for energy and water development for the fiscal year ending September 30, 1988, and for other purposes (Public Law 100-202), to be used for the reregulation of the Community's entitlement to water under the Kent Decree. The Designated Space shall be used for seasonal reregulation only, with no annual carry-over past October 1. Conservation.

(b) The costs associated with the Designated Space shall be nonreimbursable, and the non-Federal funding obligation associated with the Designated Space under the Plan 6 Agreement and any supplement thereto is hereby forgiven.

**SEC. 5. BARTLETT DAM AGREEMENT.**

(a) The Secretary is directed to amend the Bartlett Dam Agreement to provide that the Salt River Valley Water Users' Association shall increase the total Community allotment of developed water to twenty thousand acre-feet on December 31 of any calendar year in which all of the following three conditions occur:

(1) for at least two hundred and ninety-two days of the calendar year the total water stored in Salt River Valley Water Users' Association reservoirs on the Verde River is more than the storage capacity of Bartlett Dam Reservoir, which, for the purposes of this Act, is deemed to be one hundred seventy-eight thousand, one hundred eighty-six acre-feet, as periodically adjusted by the Salt River Valley Water Users' Association for silt losses;

(2) the total Community allotment of developed water under the Bartlett Dam Agreement generated during the calendar year is less than seven thousand acre-feet;

(3) the total Community allotment of developed water under the Bartlett Dam Agreement existing at the end of the calendar year is less than twenty thousand acre-feet.

(b) Article 4 of the Bartlett Dam Agreement shall be deleted and replaced with the following language: "ARTICLE 4. OPERATION OF STORAGE WORKS 'The works to be constructed upon Verde River shall be operated and maintained by the Association. The Association may at any time store any part or all of Flow of Verde River in the reservoir, and may at any time release any quantity of water from the reservoir or it may permit the river to flow through the reservoir without regulation.'"

(c) Except as provided in subsections (a) and (b), all terms of the Bartlett Dam Agreement shall remain unchanged and in full force and effect.

**SEC. 6. RATIFICATION AND CONFIRMATION OF CONTRACTS.**

(a) The contract between the Salt River Valley Water Users' Association and the Carrick and Mangham Aqua Fria Lands and Irrigation Company (the predecessor of the Roosevelt Irrigation District) dated August 25, 1921, together with the modifications thereto dated February 3, 1927, and May 31, 1950, is ratified, confirmed, and declared to be valid.

(b) The contract between the Salt River Valley Water Users' Association and the Roosevelt Water Conservation District dated October 24, 1924, together with all amendments thereto and any extension thereto entered into pursuant to the Agreement is ratified, confirmed, and declared to be valid.

(c) The Secretary is authorized and directed to revise the subcontract of the Roosevelt Water Conservation District for agricultural water service from the CAP to include an addendum substantially in the form of exhibit "3.1" to the Agreement and to execute the subcontract as revised. Notwithstanding any other provision of law, the Secretary shall approve the conversions of agricultural water to municipal and industrial uses authorized by the addendum at such time or times as the conditions authorizing such conversions, as set forth in the addendum, are found to exist.

(d) The Secretary is authorized and directed to execute and perform that agreement among the United States, the CAWCD, the RWCD, the Arizona cities of Chandler, Glendale, Scottsdale, Tempe, Mesa, Phoenix, and the Arizona town of Gilbert providing for the

assignment of a portion of the RWCD's entitlement to agricultural service from the CAP and other matters in substantially the form of exhibit "12.3" to the Agreement, and such agreement is hereby ratified, confirmed, and declared to be valid.

(e) The Secretary is authorized and directed, at such time as the authorizations in section 10(b)(1) become effective, to certify that the lands within the RWCD are free from the ownership and full cost pricing limitations of Federal reclamation law.

#### SEC. 7. COLORADO RIVER WATER EXCHANGE.

Contracts

(a) On or before December 31, 1990, the Secretary shall acquire, from willing irrigation districts and their landowners (hereinafter "sellers"), rights to twenty-two thousand acre-feet of annual consumptive use of water from the main stream of the Colorado River in the State of Arizona with a contractual priority predating September 30, 1968, and which was not included by the Secretary, the Arizona Water Commission, or the Arizona Department of Water Resources in the determination of the water supplies available to the CAP for the purpose of establishing the initial allocations to non-Indian entities. Nothing in this Act shall alter the responsibilities of the United States under article V of the March 9, 1964, Decree of the United States Supreme Court in *Arizona versus California*, 376 U.S. 340.

(b) The Secretary is authorized, as part of consideration to willing sellers for the acquisition of water pursuant to subsection (a), to amend existing repayment contracts with the United States to which such sellers are subject to provide for the discharge of any remaining repayment obligation which the irrigation districts owe to the United States as of May 30, 1987, and to certify that the lands within the irrigation districts are free from the ownership and full cost pricing limitations of Federal reclamation law.

(c) The Secretary shall contract to deliver such water to the Arizona cities of Chandler, Glendale, Scottsdale, Tempe, Mesa, and Phoenix, and the Arizona town of Gilbert, in exchange for water provided by these cities and the town to the Community, in the amounts set forth in the Agreement. Such water shall increase the supply available for delivery to CAP non-Indian municipal and industrial subcontractors of CAP water service. The terms of each water delivery contract shall be in a form mutually acceptable to the respective parties thereto and substantially similar to exhibits "3.h.1" through "3.h.7" to the Agreement, which exhibits substantially conform to the terms of the CAP municipal and industrial water service subcontracts to which each of such cities and the town are parties on the effective date of this Act, except that:

(1) there shall be no water service capital charges associated with water deliveries made pursuant to the contracts authorized by this section, except as otherwise provided in the Agreement;

(2) for the purpose of determining the allocation and repayment of costs of the CAP as provided in Article 9.3 of Contract Numbered 14-06-W-245 between the United States of America and the Central Arizona Water Conservation District dated December 15, 1972, and any amendment or revision thereof, the costs associated with the delivery of water to cities and the town pursuant to the contracts authorized by this section shall be nonreimbursable, and such costs shall be excluded from CAWCD's repayment obligation;

(3) notwithstanding the provisions of section 9(e) of the Reclamation Project Act of 1939 (43 U.S.C. 485h(e)) and section 304(b)(2) of the Colorado River Basin Project Act (43 U.S.C. 1524(b)(2)), the term of the contracts authorized by this section shall be perpetual.

(d) Within one year of the date of enactment of this Act the cities and the town shall deposit \$9,000,000 in an escrow account as provided in the Agreement for the purposes of funding the acquisition of the rights to water referred to in subsection (a). On or after the date the waiver referred to in section 10(b)(1) becomes effective, monies shall be paid out of the escrow account to the United States in accordance with the Agreement: *Provided*, That such payment shall not exceed the costs incurred by the Secretary pursuant to subsection (a) or \$9,000,000, whichever amount is less. Any monies remaining in escrow account after payment to the United States shall be returned to cities and the town. If the waiver referred to in section 10(b)(1) do not become effective by December 31, 1991, all monies in the escrow account shall be returned to the cities and the town in accordance with the Agreement.

(e) Neither the Salt River Valley Water Users' Association nor the Salt River Project Agricultural Improvement and Power District shall become subject to the provisions of the Reclamation Reform Act of 1982 (43 U.S.C. 390aa et seq.) by virtue of either its participation in the settlement or its execution and performance of the Agreement, including but not limited to the exchange provided for in this section.

#### SEC. 8. WATER DELIVERY CONTRACT AMENDMENTS; WATER LEASE.

(a) The Secretary is authorized and directed to amend the CAP water delivery contract between the United States and the Community dated December 11, 1980 (herein referred to as the "Community CAP Delivery Contract"), as follows:

(1) to extend the term of such contract to December 31, 2098, and to provide for its subsequent renewal upon terms and conditions to be agreed upon by the parties prior to the expiration of the extended term thereof;

(2) to authorize the Community to lease the CAP water to which the Community is entitled under the Community CAP Delivery Contract to the Arizona cities of Chandler, Glendale, Mesa, Phoenix, Scottsdale, and Tempe and the Arizona town of Gilbert under the terms and conditions of the Project Water Lease set forth in exhibits "3.m.1" through "3.m.7" to the Agreement for a term commencing January 1, 2000, and ending December 30, 2098;

(3) to perform the specific terms and conditions set forth in exhibit "3.j." to the Agreement.

(b) Notwithstanding any other provision of law, the amendments to the Community CAP Delivery Contract set forth in exhibit "3.j." to the Agreement and the terms and conditions of the Project Water Leases set forth in exhibits "3.m.1" through "3.m.7" to the Agreement are hereby authorized, approved, and confirmed.

(c) Consistent with subsection (d)(1) of this section, the United States shall not impose upon the Community the operation, maintenance and replacement charges described and set forth in section 7(b) of the Community CAP Delivery Contract or any other charge with respect to CAP water delivered or required to be delivered to



the cities and the town pursuant to the Community CAP Delivery Contract and the Project Water Leases herein authorized.

(d) The Community and the Secretary shall lease to the cities and the town, for a term commencing on January 1, 2000, and ending December 30, 2098, and for the total consideration of \$16,000,000 to be paid by the cities and the town to the Community, upon those terms reflected in the Project Water Leases set forth in exhibits "3.m.1" through "3.m.7" to the Agreement, up to thirteen thousand three hundred acre-feet of CAP water to which the Community is entitled under the Community CAP Delivery Contract. The Project Water Leases shall specifically provide that—

(1) the cities and the town, each in accordance with its obligations under the Project Water Leases, shall pay all operation, maintenance and replacement costs of such water to the United States, or, if directed by the Secretary, to the Central Arizona Water Conservation District: *Provided*, That such payments shall not be commenced earlier than October 1, 1998;

(2) except as otherwise provided in the Project Water Leases, the cities and the town shall not be obligated to pay water service capital charges or municipal and industrial subcontract charges or any other charges or payment for such CAP water other than the operation, maintenance, and replacement costs and lease payments as set forth in this subsection.

(e) For the purpose of determining the allocation and repayment of costs of the CAP as provided in Article 9.3 of Contract Numbered 14-06-W-245 between the United States of America and the Central Arizona Water Conservation District dated December 15, 1972, and amendment or revision thereof, the costs associated with the delivery of CAP water pursuant to the Project Water Leases referred to in subsection (d) shall be nonreimbursable, and such costs shall be excluded from CAWCD's repayment obligation.

(f) Except as authorized by this section, no water received by the Community pursuant to the Agreement may be sold, leased, transferred, or in any way used off the Community's reservation.

#### SEC. 9. CONSTRUCTION AND REHABILITATION; TRUST FUND.

(a) The Secretary is directed—

(1) pursuant to the existing authority of the Colorado River Basin Project Act (43 U.S.C. 1501 et seq.), to design and construct new facilities for the delivery of water from the Community's turnout on the CAP Granite Reef Aqueduct and from the Arizona Canal to the irrigable Community reservation lands lying north of the Arizona Canal and west of the Parker Dam Power Project power transmission line easement and to irrigable Community reservation lands south of the Arizona Canal at a cost which shall not exceed the cost for such design and construction which would have been incurred by the Secretary in the absence of the Agreement and this Act;

(2) pursuant to existing authority and obligation of the Snyder Act (25 U.S.C. 13), to deposit into the Community Trust Fund established under subsection (b)(1) \$17,000,000 for the rehabilitation and improvement of the Community's existing facilities for the delivery of water to irrigable Community reservation lands lying south of the Arizona Canal and west of the Parker Dam Power Project power transmission line easement; and

(3) to deposit into the Community Trust Fund the funds authorized to be appropriated by subsection (c) for the Commu-

Community  
development.

nity to use in the design and construction of facilities to put to beneficial use the Community's water entitlement, to defray the cost to the Community of CAP operation, maintenance and replacement charges, and for other economic and community development on the Salt River Indian Reservation.

(b)(1) As soon as practicable, the Community shall establish the Salt River Community Trust Fund into which shall be deposited—

(A) by the Secretary, the funds provided in paragraphs (2) and (3) of subsection (a), and

(B) by the State of Arizona, \$3,000,000 required by paragraph 20.2(b) of the Agreement.

Appropriation  
authorization.

(c) There is hereby authorized to be appropriated \$30,470,000 to carry out the provisions of paragraph (3) of subsection (a).

(d) Upon the completion of the actions described in section 12(a), the Trust Fund, principal and income, may be used by the Community, in its discretion, to fulfill the purposes of the Agreement and this Act, but no part of such fund may be used to make per capita payments to members of the Community.

(e) Effective with the payments into the Trust Fund by the Secretary of the amounts required under paragraph (A) of subsection (b)—

(A) the Secretary shall have no further duties or responsibilities with respect to the administration of, or expenditures from the Trust Fund, and

(B) the United States shall not be liable for any claim or cause of action arising from the Community's use and expenditure of moneys from the Trust Fund.

#### SEC. 10. CLAIMS EXTINGUISHMENT; WAIVERS AND RELEASES.

(a)(1) There are extinguished—

(A) all Allottees' claims against the United States for damages for deprivation of water rights through December 31, 1991;

(B) all Allottees' claims against all persons other than the United States for damages for deprivation of water rights through December 31, 1991, for which damages are not recoverable under subparagraph (a)(1)(A) of this section; and

(C) all rights of Allottees to assert claims against the United States and all other persons for declaratory, injunctive or other relief for the determination or enforcement of water rights for allotted lands, including rights to surface water, ground water, and effluent.

(2) For purposes of paragraph (a)(1) of this section claims for water rights include all claims under Federal and State laws (including claims for water rights in ground water, surface water, and effluent) which may otherwise have been enforceable by money damages, declaratory relief, injunction, or other relief.

(3) The benefits realized by the Allottees under this Act shall constitute full and complete satisfaction of all Allottees' claims for water rights under Federal and State laws (including claims for water rights in ground water, surface water, and effluent) that may accrue after the authorizations contained in paragraph (b)(1) of this section have become effective and which would otherwise have been enforceable by money damages, declaratory relief, injunction, or other relief.

(4) Consent is given to Allottees to maintain actions, individually or as a class, against the United States in the United States Claims Court pursuant to section 1491 of title 28, United States Code, to

recover damages, if any, for the extinguishment of claims effected by subparagraphs (a)(1)(A) and (a)(1)(B) of this section: *Provided, however,* That any claim for damages for rights extinguished by subparagraph (a)(1)(B) of this section shall not be joined in the same action as a claim for damages for rights extinguished by subparagraph (a)(1)(A) of this section.

(5) The United States shall have a claim only against the Community for any judgment entered against it in any action for damages for water rights extinguished by subparagraph (a)(1)(B) of this section, and the Community shall not have sovereign immunity with respect to such claim.

(6)(A) With respect to any claim against the United States which is extinguished by subparagraphs (a)(1)(A) and (a)(1)(B), the United States may assert as a defense in any action brought pursuant to paragraph (a)(4) of this section the limitation of section 2501 of title 28, United States Code, as to damages incurred more than six years before the commencement of the action, but it shall not assert a timeliness defense as to damages incurred within six years before the commencement of the action.

(B) With respect to any claim for damages for rights extinguished by subparagraph (a)(1)(B) of this section, the United States may assert as a defense any defense which the person whose liability was extinguished might have asserted in an action brought by the Allottees against him prior to the effective date of this Act.

(b)(1) The Community is authorized, as part of the performance of its obligations under the Agreement, to execute a waiver and release of all present and future claims of water rights or injuries to water rights (including water rights in ground water, surface water, and effluent), from time immemorial to the effective date of this Act, and any and all future claims of water rights (including water rights in ground water, surface water, and effluent), from and after the effective date of this Act, which the Community may have, or which it may have standing to assert on behalf of its members and Allottees, against the United States; the State of Arizona or any agency or political subdivision thereof; or any other person, corporation, or municipal corporation, arising under the laws of the United States or the State of Arizona.

(2) In any action asserted within two years after the date of enactment of this Act by the Community against the United States in the United States Claims Court for monetary damages based upon loss or impairment of water rights the United States may assert a limitation as to damages incurred more than eight years before the commencement of the action instead of the six year limitation of section 2501 of title 28, United States Code, and it shall not assert a timeliness defense as to damages incurred within eight years before the commencement of the action.

(c) The benefits realized by the Community under this Act shall constitute full and complete satisfaction of all monetary claims against the United States for any damages alleged to accrue after completion of the requirements of section 12(a).

(d) Except as provided in paragraph (a)(5) of this section and paragraphs 17.2 and 17.5 of the Agreement, the United States shall not assert any claim against any person in its own right or on behalf of the Community based upon—

(1) water rights or injuries to water rights of the Community, its members or Allottees; or

(2) water rights or injuries to water rights held by the United States on behalf of the Community, its members or Allottees.

(e) In the event the authorizations contained in paragraph (b)(1) of this section do not become effective pursuant to section 12(a), the Community shall retain the right to assert past and future water rights claims as to all reservation lands.

#### SEC. 11. MISCELLANEOUS PROVISIONS.

Claims.

(a) In the event any party to the Agreement should file a lawsuit in Federal District Court only relating directly to the interpretation or enforcement of the Agreement, naming the United States of America or the Communities as parties, authorization is hereby granted to join the United States of America and/or the Community in any such litigation, and any claim by the United States of America or the Community to sovereign immunity from such suit is hereby waived.

Claims.

(b) From and after the effective date of this Act, the Salt River Valley Water Users' Association and the Salt River Project Agricultural Improvement and Power District collectively are authorized to assert, on behalf of the Community, the Community's claims to spill water, as defined in the Agreement, in the General Adjudication of the Gila River System and Source currently pending in the Superior Court of the State of Arizona in and for the County of Maricopa (hereinafter referred to as the "Gila River Adjudication"). From and after such effective date, the United States shall not prosecute a separate claim or claims for spill water on behalf of the Community in the Gila River Adjudication or in any other administrative or judicial proceeding. The United States shall not challenge any claims to spill water on behalf of the Community in the Gila River Adjudication or in any other administrative or judicial proceeding.

43 USC 1522  
note.

(c) Upon the effective date of this Act as set forth in section 12, section 302 of the Colorado River Basin Project Act (43 U.S.C. 1522) shall no longer apply to the Community.

(d) The United States of America shall make no claims for reimbursement of costs arising out of the implementation of this Act or the Agreement against any Indian-owned land within the Community's reservation, and no assessment shall be made in regard to such costs against such lands.

(e) Water received by the Cities and Town pursuant to paragraphs 10.3, 11.0, 12.2, and 19.0 of the Agreement shall not affect any future allocation or reallocation of the CAP supply.

(f) To the extent the Agreement does not conflict with the provisions of this Act, such Agreement is hereby approved, ratified, and confirmed. The Secretary is authorized and directed to execute and perform such Agreement. The Secretary is further authorized to execute any amendments to the Agreement and perform any actions required by any amendments to the Agreement which may be mutually agreed upon by the parties.

(g) Effective as of the date of enactment of this Act, and, notwithstanding the provisions of section 177 of title 25 United States Code, the Salt River Pima-Maricopa Indian Community may, as to any land outside of the Salt River Pima-Maricopa Indian Reservation to which it holds fee title, leasehold interest or any other interest, sell, encumber, hypothecate, lease or otherwise deal with such land or interest in such land as any other owner, lessor or interest holder might, subject to the laws of the state within which the land is situated.

(h) Within thirty days after the date of enactment of this Act, the Secretary shall request the Arizona Department of Water Resources to recommend a reallocation of non-Indian agricultural CAP water that has been offered to but not contracted for by potential non-Indian agricultural subcontractors. Within one hundred and eighty days of receipt of such recommendations, the Secretary shall reallocate such water for non-Indian agricultural use, and the Secretary and CAWCD shall thereafter offer amendatory or new subcontracts for such water to non-Indian agricultural users.

Agriculture and  
agricultural  
commodities.

#### SEC. 12. EFFECTIVE DATE.

Contracts

(a) The authorizations contained in section 10(b)(1) of this Act shall not be effective until such time as—

(1) the Secretary has fulfilled the requirements of sections 4 and 7;

(2) the Bartlett Dam Agreement has been amended as provided in section 5;

(3) the Roosevelt Water Conservation District subcontract for agricultural water service from CAP has been revised and executed as provided in section 6(c) and the assignment described in section 6(d) has been executed;

(4) the funds required for the purpose of section 9(a)(1) have been appropriated;

(5) the funds authorized by sections 9(a)(2) and 9(c) have been appropriated and deposited into the Community Trust Fund;

(6) the State of Arizona has appropriated and deposited into the Community Trust Fund the \$3,000,000 required by paragraph 20.2(b) of the Agreement;

(7) the stipulation which is attached to the Agreement as exhibit "3.e." has been approved; and

(8) the Agreement has been modified to the extent it is in conflict with this Act and has been executed by the Secretary.

(b) If the actions described in paragraphs (1), (2), (3), (4), (5), (6), (7), and (8) of subsection (a) have not all occurred by December 31, 1991, sections 4, 5, 6, 7(b), 7(c), 8, 9(a)(2), 9(a)(3), 9(b), 9(c), 10(a)(1)(c), 10(d), and 11(a), 11(b), 11(c), 11(d), 11(e), and 11(f), and any contracts entered into pursuant to those provisions, shall not thereafter be effective, any funds appropriated pursuant to sections 9(a)(2) and 9(c) shall revert to the Treasury, and any funds appropriated pursuant to paragraph 20.2(b) of the Agreement shall revert to the State of Arizona.

#### SEC. 13. OTHER CLAIMS.

Nothing in the Agreement or this Act shall be construed in any way to quantify or otherwise affect the water rights, claims or entitlements to water of any Arizona Indian tribe, band or community, other than the Community.

#### SEC. 14. AK-CHIN.

Loans

(a) The Ak-Chin Indian Community of Arizona may make repayment of the Ak-Chin West supplemental loan by a discounted prepayment in lieu of the repayment terms and provisions contained in section 5(c) of Public Law 89-984, the Small Reclamation Projects Act. The Secretary of the Interior shall determine such amount in a manner that will result in an equitable repayment based on the current applicable interest rate.

(b) The Ak-Chin West supplemental loan is hereby exempt from the 1986 amendments (Public Law 99-546) to the Small Reclamation Projects Act, and the requirement contained in section 4(e) of Small Reclamation Projects Act for a sixty-day congressional review of the approved loan application is hereby waived.

Approved October 20, 1988.

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**LEGISLATIVE HISTORY—H.R. 4102:**

HOUSE REPORTS: No. 100-868 (Comm. on Interior and Insular Affairs).  
CONGRESSIONAL RECORD, Vol. 134 (1988):

Sept. 13, considered and passed House.

Sept. 30, considered and passed Senate, amended.

Oct. 3, 4, House concurred in Senate amendment.



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EXHIBIT "21.7"  
1977 Water Commissioner's Report



IN THE SUPERIOR COURT OF THE STATE OF ARIZONA  
IN AND FOR THE COUNTY OF MARICOPA

PATRICK T. HURLEY,	)	
	)	NO. C-4564
Plaintiff,	)	
	)	
UNITED STATES OF AMERICA,	)	WATER COMMISSIONER'S REPORT
	)	
Intervenor,	)	
	)	
vs.	)	
	)	
CHARLES F. ABBOTT; et al.,	)	
	)	
Defendants.	)	

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The undersigned, A. L. Monette, heretofore having been selected and designated as the Water Commissioner to execute and carry out the provisions of the Decree herein and report to the Court with reference thereto, respectfully submits the following Report for the Court's information:

I

The Salt River Valley Water Users' Association (hereinafter referred to as the "Association"), by contracts with the United States Government of June 25, 1904, and September 6, 1917, operates the Salt River Federal Reclamation Project (hereinafter referred to as the "Salt River Project"), and delivers water pursuant to and in accordance with the Decree of the Court heretofore entered herein and commonly referred to as the "Kent Decree". The Association has, as provided for in such decree, reported to, or made its records available to, the Water Commissioner as to the operation and maintenance of the Salt River Project and the distribution of water administered by the Association under the authority of the Water Commissioner and the Kent Decree.

The Association has heretofore reported to the Water Commissioner that it has entered into contracts with the City of Phoenix, the City of Mesa, the City of Scottsdale, the City of Tempe, the City of Glendale, the City of Peoria, the City of Chandler and the Town of Gilbert, all of which are municipalities lying within the Salt River Reservoir District, the service area of the Association; in view of the expanded urban development within the Reservoir District of the Salt River Project land area, the Salt River Project now provides a major portion of the total domestic, commercial and industrial water supply needed by the municipal population of the above Cities; this water supply and delivery is made possible by virtue of contracts between the Cities and the Association, each of which has been approved by the Secretary of the Interior of the United States, whereby the Cities pay the Association the annual assessment owed by each landowner on lands that have become urbanized and are no longer utilized for agricultural purposes; the water to which these lands are entitled, including normal flow, stored and developed, surface and underground water is delivered by the Association to the Cities' water filtration plants for use on regular member and townsite lands within the Reservoir District, primarily for municipal and industrial purposes; the Cities are contracting parties with the Association (or propose to become contracting parties with the Association) in order that each municipality contracting with the Association may make available to the owners or occupants of Association-member lands water available for beneficial use in connection with such lands, all as will be further described herein.

## III

The use of water by members of the Association in connection with their respective parcels of regular member

lands and townsite lands has changed as valley lands have been urbanized, as the population of the area has increased and as municipal water sources have changed; as agricultural uses of member lands have changed to uses for residential, commercial, industrial and municipal uses, in like manner the water uses appurtenant to such lands have accordingly changed; the water distribution facilities of the Association were originally developed for the purpose of delivering irrigation water to the high point of each quarter section; without filtration and further treatment, the water delivered by the Association is not adaptable for urban and municipal uses other than urban and municipal irrigation uses; at the same time, the owners and occupants of these member lands require a water supply for the beneficial uses for which the lands have been and are now being adapted and used.

#### IV

The regular member lands lying within the Reservoir District are becoming urbanized and reliable forecasts indicate that this urbanization will continue; the water which has been made subject to the water delivery contracts between the Association and the Cities, and which will, in the future, progressively be delivered by the Cities for domestic, commercial and industrial uses, has been and will continue to be put to beneficial use; the uses now being made and which will be made of the water in the future will not lawfully interfere with any other existing water rights; the Water Commissioner hereby reports the changes in use of water from agricultural to municipal and industrial, and the city domestic uses for certain lands within the confines of the Salt River Reservoir District, as shown on the attached Exhibit "A".

V

In the decree entered herein it is provided that the Water Commissioner shall supervise the proper \* \* \* distribution of the water to be diverted by the canals under the said decree \* \* \* in accordance with the rights of the persons entitled thereto as found by the decision and decree herein.

In the decree it is further provided in part as follows:

"Commissioner shall \* \* \* apply to the judge of the court for such further or specific directions as to his powers and duties whenever such directions shall be necessary or proper for the effective carrying out of the provisions of the decree herein."

Your Commissioner respectfully requests that the court give specific directions as to his duties in respect to the proper distribution of water to the lands affected by the afore-said contracts and specifically described in the tables attached hereto, in view of the changes in delivery and use under said contracts.

VI

The Water Commissioner respectfully requests the court to give notice of the filing of this report to representatives of all interested parties, viz, City of Phoenix, City of Mesa, City of Scottsdale, City of Tempe, City of Glendale, City of Peoria, City of Chandler, Town of Gilbert, the United States and the Salt River Valley Water Users' Association. The Water Commissioner respectfully requests that the court fix a time within which the interested parties may file objections or other response to the report and that a time and place be fixed by the court for considering the report and all objections or other responses thereto and that appropriate notice be ordered to all interested parties of the time within which responses may be filed to this report and of the time and place fixed by the court for considering the report and any objections and responses thereto.

Respectfully submitted this 3rd day of June, 1977.

A. L. Monette  
A. L. Monette  
Water Commissioner



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EXHIBIT "21.14"

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Statement of Policies and Principles

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Regarding the Use of CAP Facilities

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to Facilitate Indian Water Rights

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Settlements

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ADOPTED BY THE CENTRAL ARIZONA WATER CONSERVATION DISTRICT  
BOARD OF DIRECTORS - March 3, 1988

STATEMENT OF POLICIES AND PRINCIPLES REGARDING  
THE USE OF CAP FACILITIES TO FACILITATE  
INDIAN WATER RIGHTS SETTLEMENTS

Policy

The Board of Directors of the Central Arizona Water Conservation District recognizes that unresolved Indian water rights claims are a constraint on orderly and efficient water management. The Board recognizes that a broad public benefit is a potential result of resolution of these claims, and wishes to lend the resources of the District to efforts to realize those benefits while protecting the ability of the CAP to accomplish its primary purpose of delivering CAP water to CAP customers. Accordingly, we support and direct the use of CAP facilities to facilitate Indian water rights settlements which we find to be consistent with our basic responsibilities. As a general condition, we find that such settlements should be implemented and given priority over non-Project uses of CAP facilities, subject to the following principles:

Principles:

1. Water Supply

- a) There should be no adverse impact on water supplies otherwise available for CAP.
- b) There should be no adverse impact on CAP users that are not parties to the settlement.

1 c) Supplemental water supplies delivered through CAP  
2 facilities should share losses pro rata with all  
3 other water supplies delivered through such  
4 facilities.

5 2. System Capacity

6 There should be no reduction in the delivery  
7 capacity otherwise available to existing CAP  
8 subcontractors (i.e., there should be no change  
9 required in the anticipated water delivery schedules  
10 of those that are not parties to the settlement).

11 3. Navajo Power

12 a) There must be no reduction in Navajo Surplus  
13 available for long term marketing under the Navajo  
14 Marketing Plan.

15 b) The settlement should not interfere with the  
16 District's receiving optimum value from the sale of  
17 short term Navajo Surplus.

18 c) At no time may the power costs to settlement  
19 participants be less than those paid by CAP water  
20 users generally.

21 4. O&M Costs

22 The settlement should provide for the recovery of an  
23 appropriate charge to offset fixed O&M costs  
24 associated with the delivery of settlement water  
25 supplies.  
26



1           5.   Repayment

2                   Water delivered through Project facilities to  
3                   facilitate Indian settlements (such as replacement  
4                   water and water leased by Indians to non-Indians)  
5                   should be treated as if it were Project water  
6                   delivered to Indian entities for purposes of  
7                   determining CAWCD's repayment obligation

8   Subject to the foregoing principles, each proposed settlement  
9   should be considered on its own merits. The Board's approval of  
10   any particular settlement shall not be regarded as establishing any  
11   precedent for any other settlement.

