

**INTERGOVERNMENTAL AGREEMENT  
BETWEEN CITY OF PEORIA, ARIZONA, AND  
CITY OF TUCSON, ARIZONA  
FOR STORAGE, RECOVERY AND EXCHANGE OF  
CENTRAL ARIZONA PROJECT WATER**

City of Peoria Contract No. \_\_\_\_\_

City of Tucson Contract No. \_\_\_\_\_

This INTERGOVERNMENTAL AGREEMENT (“Agreement”) is entered into as of the \_\_\_\_\_ day of \_\_\_\_\_, 2023 (“Effective Date”), by and between the CITY OF PEORIA, ARIZONA, an Arizona municipal corporation (“Peoria”) and the CITY OF TUCSON, ARIZONA, an Arizona municipal corporation (“Tucson”), (hereinafter Peoria and Tucson are sometimes jointly referred to as the “Parties” and individually as a “Party”).

**RECITALS**

- A. Arizona Revised Statutes (“A.R.S.”), § 11-952(A), provides that public agencies may enter into intergovernmental agreements for the provision of services or for joint or cooperative action.
- B. Peoria is empowered by Article I, § 3(15) of the City of Peoria Charter and by action of its City Council has been authorized to enter into this Agreement and has authorized the undersigned to execute this Agreement on behalf of Peoria.
- C. Tucson is empowered by Chapter IV, § 1(7) of the City of Tucson Charter and by action of its City Council has been authorized to enter into this Agreement and has authorized the undersigned to execute this Agreement on behalf of Tucson.
- D. Pursuant to A.R.S. § 45-801.01, it is the public policy of the State of Arizona to encourage the use of renewable water supplies, including Colorado River water, instead of groundwater through the use of underground storage, savings, and replenishment.
- E. Peoria is entitled to a certain volume of Central Arizona Project Water (“CAP Water”) through CAP Water Services Subcontract No. 07-XX-30-W0480 as amended.
- F. Tucson is entitled to a certain volume of CAP Water through CAP Water Services Subcontract No. 07-XX-30-W0484.
- G. Peoria has a certain volume of CAP Water that can be delivered through the Central Arizona Project canal to Tucson for underground storage.
- H. Tucson operates the Southern Avra Valley Storage and Recovery Project (“SAVSARP”), a water storage facility, pursuant to Underground Storage Facility Permit No. 71-211276, issued by the Arizona Department of Water Resources (“ADWR”).

- I. Peoria is authorized to store up to 15,000 acre feet (“AF”) annually of its CAP Water at SAVSARP pursuant to Water Storage Permit No. 73-211276.1100 issued by ADWR.
- J. Peoria will obtain or earn long-term storage credits for the stored water pursuant to A.R.S. § 45-852.01.
- K. Tucson desires to increase the available water storage space available to Peoria at SAVSARP.
- L. Peoria desires to store additional CAP Water in SAVSARP and to obtain or earn long-term storage credits pursuant to A.R.S. § 45-852.01.
- M. Peoria will apply for authorization to exchange Peoria’s stored CAP Water for Tucson’s CAP Water , pursuant to a Notice of Water Exchange as issued by ADWR.
- N. Peoria and Tucson desire to enter into water exchanges whereby Tucson takes delivery of recovered Peoria water in exchange for delivery to Peoria of a like amount of Tucson’s CAP Water pursuant to A.R.S. § 45-1001 *et seq.* These exchanges are anticipated to take place pursuant to an “Exchange Implementation Agreement” as described in Sections 3.17 & 9 of the February 1, 2017 “System Use Agreement” between the United States and the Central Arizona Water Conservation District.

**AGREEMENT**

NOW, THEREFORE, in consideration of the mutual promises contained herein, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

**1. Definitions**

- 1.1. “AF” means acre feet.
- 1.2. “Agreement” or “IGA” means this Intergovernmental Agreement entered into between the Parties on the Effective Date identified above.
- 1.3. “ADWR” means the Arizona Department of Water Resources or any successor state agency that regulates groundwater and water exchanges.
- 1.4. “CAWCD” means the Central Arizona Water Conservation District.
- 1.5. “Central Arizona Project Water” or “CAP Water” means Colorado River water allocated to Peoria or Tucson pursuant to their respective subcontracts with the United States and the CAWCD.
- 1.6. “Peoria Point(s) of Delivery” mean the location(s) where CAP Water can be delivered from the CAP canal to Peoria. Peoria Points of Delivery include, but may not be limited to, the Pyramid Peak Water Treatment Plant, all within the Phoenix Active Management

Area (“AMA”). Peoria Points of Delivery are more specifically described in the attached Exhibit A.

- 1.7. “SAVSARP” means the Southern Avra Valley Storage and Recovery Project, an Underground Storage Facility operated by Tucson pursuant to Underground Storage Facility Permit, No. 71-211276, and all amendments thereafter, and located in the Tucson AMA, Section 22, 27, 28, 29, 32, 33 and 34, Township 14 South, Range 11 East, GSRB&M.
- 1.8. “SAVSARP Point of Delivery” means the point at which CAP Water is diverted into SAVSARP and measured at the flow meter(s) represented on the attached Exhibit B.
- 1.9. “Shortage Year” means any calendar year in which the amount of CAP Water CAWCD is authorized to deliver to Peoria or Tucson is reduced pursuant to federal laws and agreements.
- 1.10. “Water Storage Fee” means the fee for storage of Peoria’s CAP Water at SAVSARP and shall be assessed at the time of delivery for each AF of Peoria CAP Water delivered to SAVSARP. The Water Storage Fee is designed to cover Tucson’s operation, maintenance, replacement, and administrative costs (O&M), as well as a portion of the capital costs for an expansion of SAVSARP needed to accommodate water stored by Peoria (Capital). The schedule of the Water Storage Fee applicable in each year of the Agreement is attached as Exhibit C to this Agreement.
- 1.11. “Water Storage Permit” means Water Storage Permit No. 73-211276.110 issued to Peoria by ADWR, authorizing the storage of up to 15,000 AF annually at SAVSARP.
- 1.12. The terms defined in Title 45 of the Arizona Revised Statutes have the same meanings within this Agreement. The first letters of such defined terms are also capitalized within this Agreement.

## **2. Term of Agreement**

The term of this Agreement commences on the Effective Date identified above and will expire on December 31, 2033, unless renewed. The time of performance as contemplated within this Agreement will commence upon September 1, 2023 until expiration of this Agreement.

## **3. Scope of Services**

This Agreement includes the following activities:

- 3.1. Delivery by Peoria of up to a volume of 15,000 AF annually of its CAP Water entitlement to the SAVSARP turnout through the CAP for storage at SAVSARP as agreed upon by Peoria and Tucson.
- 3.2. Storage and recovery of Peoria’s CAP Water at SAVSARP.

- 3.3. Accrual by Peoria of long-term storage credits from ADWR associated with CAP Water stored by Peoria at SAVSARP.
- 3.4. Exchanges of portions of Tucson's CAP Water allocation delivered to designated Peoria Points of Delivery with the recovered CAP Water that Peoria stored at SAVSARP.

#### **4. Peoria Obligations**

- 4.1. On or before September 1<sup>st</sup> of each calendar year, Peoria will confer with Tucson and create a firm volume and delivery schedule for delivery of up to a volume of 15,000 AF of Peoria's CAP Water to the SAVSARP turnout during the following calendar year and a preliminary projected volume and delivery schedule for the subsequent two calendar years. The schedule shall be in a writing confirmed by the Director of the City of Peoria Water Services Department, or their Designee, and the Director of Tucson Water.
- 4.2. By October 1<sup>st</sup> of each calendar year, Peoria will order the agreed-upon amount of its CAP Water entitlement pursuant to Section 4.1 of this Agreement and direct CAWCD to deliver it to the SAVSARP turnout for storage at SAVSARP during the following calendar year. Peoria will pay CAWCD for all applicable costs associated with delivering the designated CAP Water entitlement to the SAVSARP turnout. Nothing in this Agreement shall be construed to require Peoria to schedule delivery of any portion of its CAP Water to the SAVSARP turnout.
- 4.3. Peoria will pay Tucson the total Water Storage Fee associated with storage of Peoria's CAP Water within thirty (30) days of receipt of an invoice from Tucson following the month in which Peoria's CAP Water was delivered to the SAVSARP turnout.
- 4.4. Annually, by the end of February, Parties will provide each other with sufficient information to complete its required ADWR reporting. On or before March 31<sup>st</sup> of each year following any calendar year in which Peoria's CAP Water is delivered for storage at SAVSARP, Peoria will file an annual report with ADWR reporting the quantity of Peoria's CAP Water delivered for storage at SAVSARP in the previous calendar year, pursuant to A.R.S. § 45-875.01(B).
- 4.5. On or before September 1<sup>st</sup> of each year, Peoria will confer with Tucson and create a schedule for exchange of Tucson's CAP Water with Peoria's stored and recovered water at SAVSARP. The schedule shall include the volume of Tucson's CAP Water to be delivered to Peoria Points of Delivery during the following calendar year and the volume and location(s) of recovery of Peoria's CAP Water stored at SAVSARP to be recovered within twelve (12) months of the delivery of Tucson's CAP Water to Peoria. In a "shortage year," the volume of Tucson's CAP Water to be exchanged with Peoria shall not exceed either Tucson's CAP water entitlement for that calendar year or Tucson's expected water demand, whichever is lower. The schedule shall be in writing confirmed by the Director of the City of Peoria Water Services Department, or their Designee, and the Director of the City of Tucson Water Department. Nothing in this Agreement shall be construed to require Peoria to exchange in any given year Tucson's CAP Water for Peoria's CAP Water stored within the SAVSARP.

- 4.6. On or before October 1<sup>st</sup> of the year before the first year in which Tucson's CAP Water is delivered to Peoria Points of Delivery under this Agreement, Peoria will apply for and maintain Recovery Well Permits from ADWR pursuant to A.R.S. § 45-834.01 for recovery of long-term storage credits accrued by Peoria at SAVSARP. Peoria will pay the fees assessed by ADWR for the Recovery Well Permits.
- 4.7. Prior to an exchange of Peoria's stored and recovered water with Tucson's CAP Water, Peoria will obtain all necessary approvals for the exchange described in this Agreement, including applicable approvals from ADWR and CAWCD. Peoria will bear the cost of obtaining the necessary approvals.
- 4.8. Peoria will take delivery of Tucson's CAP Water at Peoria Points of Delivery as agreed to pursuant to the schedule established under this Agreement.
- 4.9. Annually, by the end of February, Parties will provide each other with sufficient information to complete its required ADWR reporting. On or before March 31<sup>st</sup> of each year following the calendar year in which Peoria recovers its long-term storage credits from SAVSARP, Peoria will file an annual report with ADWR reporting the quantity of its long-term storage credits recovered in the previous calendar year from SAVSARP, pursuant to A.R.S. § 45-875.01(D), together with any and all applicable, including long-term storage credit recovery fees required pursuant to A.R.S. § 45-874.04.

## **5. Tucson Obligations**

- 5.1. On or before September 1<sup>st</sup> of each calendar year, Tucson will confer with Peoria and create a volume and delivery schedule for delivery of Peoria's CAP Water to the SAVSARP turnout during the following calendar year and a preliminary projected volume and delivery schedule for the subsequent two calendar years. Tucson agrees that it will provide first-priority access to available storage capacity as determined by the Director of Tucson Water to Peoria at SAVSARP up to a volume of 15,000 AF annually, subject only to Tucson's storage of its own CAP Water and any Tucson obligations that precede the effective date of the Agreement. The schedule shall be in writing confirmed by the Director of the City of Peoria Water Services Department, or their Designee, and the Director of Tucson Water.
- 5.2. On or before September 1<sup>st</sup> of each year, Tucson will confer with Peoria and create a schedule for exchange of Tucson's CAP Water with Peoria's stored and recovered water at SAVSARP. The schedule shall include the volume of Tucson's CAP Water to be delivered to Peoria Points of Delivery during the following calendar year and the volume and location(s) of recovery of Peoria's CAP Water stored at SAVSARP to be recovered within twelve (12) months of the delivery of Tucson's CAP Water to Peoria. In a "shortage year," the volume of Tucson's CAP Water to be exchanged with Peoria shall not exceed either Tucson's CAP Water entitlement for that calendar year or Tucson's expected water demand, whichever is lower. The schedule shall be in a writing confirmed by the Director of the City of Peoria Water Services Department, or their Designee, and the Director of Tucson Water. Nothing in this Agreement shall be

construed to require Peoria to exchange in any given year Tucson's CAP Water for Peoria's CAP Water stored within the SAVSARP.

- 5.3. On or before September 1<sup>st</sup> of each year, Tucson shall provide to Peoria a list of its wells through which Peoria can recover its long-term storage credits along with all necessary information to support Peoria's application for Recovery Well Permits on those wells. Tucson agrees to assist Peoria in its efforts to obtain all applicable approvals from ADWR and CAWCD to facilitate each exchange. In the event Peoria is unable to obtain the requisite approvals from ADWR and CAWCD to recover water stored in SAVSARP or to effectuate an exchange between Peoria and Tucson, Tucson's obligations under this Section are excused for that calendar year.
- 5.4. On or before October 1<sup>st</sup> of each year, Tucson will order that portion of its CAP Water entitlement identified in the schedule referenced in Sections 4.5 and 5.2 of this Agreement, and direct CAWCD to deliver it to Peoria Points of Delivery identified in the schedule. Tucson will pay CAWCD for all applicable costs associated with delivering the designated CAP Water entitlement to the Peoria Point of Delivery.
- 5.5. On or before December 31<sup>st</sup> of each year in which a portion of Tucson's CAP Water is exchanged with Peoria's stored and recovered water at SAVSARP pursuant to this Agreement, Peoria will recover its long-term storage credits through Tucson recovery wells in accordance with the schedules developed under this Agreement and Recovery Well Permits issued by ADWR. Tucson will operate and maintain the recovery wells and take delivery of the recovered Peoria water at its own expense.
- 5.6. Tucson will accept and store Peoria's CAP Water delivered to SAVSARP pursuant to the agreed-upon volume and delivery schedules.
- 5.7. On or before March 31<sup>st</sup> of each year following the calendar year in which Peoria's CAP Water is delivered for storage at SAVSARP, Tucson will file an annual report with ADWR pursuant to A.R.S. § 45-875.01, showing the volume of Peoria's CAP Water stored at SAVSARP in the previous calendar year.

## **6. Termination for Cause**

### **6.1. Default by Peoria.**

Subject to the requirements of Section 6.4 of this Agreement, Tucson may, by written Notice of Default, terminate this Agreement in whole or in part if Peoria:

- (a) Fails to secure Recovery Well Permits required under this Agreement prior to October 1<sup>st</sup> of the year before the first year in which Tucson's CAP Water is delivered to Peoria Points of Delivery under this Agreement.
- (b) Fails to obtain all necessary approvals to effectuate an exchange of water between Peoria and Tucson from ADWR and CAWCD prior to an exchange of Peoria's stored and recovered water with Tucson's CAP Water.

- (c) Fails to deliver Peoria's CAP Water specified by the Parties to SAVSARP based on the schedule and in the volumes agreed to by the Parties.
- (d) Fails to accept any or all of Tucson's CAP Water for delivery at the specified Peoria Points of Delivery pursuant to the schedule agreed to by the Parties.
- (e) Fails to file reports with ADWR as required by law relating to storage in and recovery from SAVSARP or to provide other documents and information required under this Agreement.
- (f) In addition to any other remedies provided at law or in Section 6.5 of this Agreement, if Peoria defaults pursuant to subsection (d) or (e) of this Section, Peoria shall reimburse Tucson for all costs and expenses under this Agreement corresponding to the volume of Tucson's CAP Water delivered to Peoria for which Peoria is in default.

## 6.2. Default by Tucson.

Subject to the requirements of Section 6.4 of this Agreement, Peoria may, by written Notice of Default, terminate this Agreement in whole or part if Tucson:

- (a) Fails to accept any or all of Peoria's CAP Water for delivery at the SAVSARP turnout pursuant to the schedule agreed to by the Parties.
- (b) Fails to file reports with ADWR relating to SAVSARP as required by law or provide other documents and information required under this Agreement
- (c) Fails to operate SAVSARP in a manner that results in Peoria receiving at least the volume of long-term storage credits from ADWR equal to the volume of Peoria's CAP Water delivered to SAVSARP minus two percent (2%) losses for evaporation and transpiration and minus the percent that is required to be credited to the aquifer pursuant to A.R.S. § 45-852.01.
- (d) Fails to allow Peoria to recover its long-term storage credits from Tucson recovery wells for which Peoria has a recovery well permit in accordance with the schedule developed under this Agreement.
- (e) Fails to order from CAWCD on or before October 1 of each applicable calendar year, all volumes of Tucson's CAP Water for delivery to Peoria Points of Delivery pursuant to the schedules agreed to by the Parties.
- (f) In addition to any other remedies provided at law or in Section 6.5 of this Agreement, if Tucson defaults pursuant to subsections (a), (b) or (c) this Section, Tucson shall reimburse Peoria for all costs and expenses under this Agreement

corresponding to the volume of Peoria's CAP Water delivered to Tucson for which Tucson is in default.

### 6.3. Agreement Rendered Impossible.

Subject to the requirements of Section 6.4 of this Agreement, either Party may terminate this Agreement if the following occurs:

- (a) CAWCD fails or declines to deliver a Party's CAP Water entitlement to the other Party's Points of Delivery after a request from the first Party to do so. Regardless of whether either party terminates this Agreement, in the event CAWCD declines to deliver Tucson's CAP Water to Peoria Points of Delivery, Peoria and Tucson agree to coordinate an exchange of long-term storage credits between the Parties. Tucson agrees to deliver a volume of CAP Water to Agua Fria Recharge Project ("AFRP") in the Phoenix AMA to earn long-term storage credits. The volume of CAP water Tucson will deliver to AFRP will be the amount necessary to earn a like amount of long-term storage credits as the volume of CAP Water in acre-feet CAWCD declines to deliver. Peoria agrees to exchange credits it owns at SAVSARP for those owned by Tucson at AFRP in a one-to-one, non-monetary transaction. To facilitate the exchange, Peoria agrees to pay the costs of obtaining a Water Storage Permit at AFRP for Tucson and any Long-Term Credit Transfer fees. Tucson agrees to pay any Direct Underground Water fees associated with storage at AFRP. If unforeseen circumstances render the long-term storage credit exchange not feasible, Peoria retains the right to sell any long-term storage credits accrued by Peoria under this Agreement associated with the water CAWCD declines to deliver. Peoria shall provide Tucson with a first right of refusal to purchase any long-term storage credits accrued by Peoria under this Agreement associated with the water CAWCD declines to deliver.
- (b) ADWR fails or declines to issue long-term storage credits to Peoria after submission by the Parties to ADWR of the reports required under this Agreement. Tucson agrees to reasonably cooperate and assist Peoria in providing additional information to ADWR to facilitate a reconsideration of ADWR's decision declining to issue long-term storage credits to Peoria.
- (c) ADWR rejects any requested amendments to the applicable Notice of Water Exchange, or rejects a new Notice of Water Exchange after the Parties' unsuccessful attempts to correct deficiencies noted by ADWR. Regardless of whether either party terminates this Agreement, in the event ADWR declines to accept the Parties' Notice of Water Exchange after Peoria's delivery of its CAP Water to Tucson, Peoria retains the right to recuperate the water stored through the same mechanisms as outlined in Section 6.3(a) of the Agreement.

### 6.4. Notice, Cure and Non-Waiver

- (a) Prior to terminating this Agreement based on a default under Sections 6.1,

6.2 or 6.3 of this Agreement, the Party alleging the default will give the other Party written Notice of Default in the manner provided in Section 7, specifying the nature of the default.

- (b) If after receipt of a Notice of Default, the Party alleged to be in default does not commence to cure the default within thirty (30) calendar days after receipt of the Notice of Default and does not cure the default promptly in a continuous and diligent manner within a reasonable period of time, then the non-defaulting Party to this Agreement, at its option, may terminate this Agreement.
- (c) Except as otherwise expressly provided in this Agreement, a failure or delay by either Party in asserting its rights or remedies as to a default will not operate as a waiver of a default, or of such rights or remedies, or deprive either such Party of its right to institute and maintain an action or proceeding which it may deem necessary to protect, assert or enforce such rights or remedies.
- (d) Except as otherwise expressly stated in this Agreement, the rights and remedies of the Parties are cumulative, and the exercise by either Party of one or more of such rights or remedies will not preclude the exercise by it, at the same time or different times, of other rights or remedies.

#### 6.5. Specific Performance

- (a) The Parties acknowledge that Tucson's failure to order the delivery of its CAP Water to Peoria Points of Delivery pursuant to this Agreement constitutes an irreparable harm to Peoria. In addition to its other remedies available at law, the Parties acknowledge that Peoria may require specific performance of Section 5.4 of this Agreement.
- (b) The Parties acknowledge that Peoria's failure to obtain Recovery Well Permits pursuant to the Agreement or failure to file an annual report with ADWR reporting the quantity of Peoria's long-term storage credits recovered by Tucson on behalf of Peoria pursuant to A.R.S. § 45-875.01(D) constitutes an irreparable harm to Tucson. In addition to its other remedies available at law, the Parties acknowledge that Tucson may require specific performance of Sections 4.6 and 4.9 of this Agreement.

#### 6.6. Notices

All notices, demands or other communications in this Agreement provided to be given, made or sent by either Party hereto to the other Party will be deemed to have been fully given, made or sent when made in writing and personally delivered or received by United States postpaid registered or certified mail and addressed as follows:

To Peoria:                      Director, Water Services Department

City of Peoria  
9875 N. 85<sup>th</sup> Avenue  
Peoria, AZ 85345

With a Copy To: City Attorney  
City of Peoria  
8401 W. Monroe St.  
Peoria, AZ 85345

To Tucson: Director  
Tucson Water  
P.O. Box 27210  
Tucson, Arizona 85726

With a Copy To: City Attorney  
City of Tucson  
P.O. Box 27210  
Tucson, Arizona 85726

The address or person to which a notice, demand or other writing may be given, made or sent to either Party may be changed by written notice given by such Party as above provided.

## **7. Compliance With Laws**

Each Party will comply with all existing and subsequently enacted Federal, State and local laws, ordinances, and codes and regulations that are, or become applicable to this Agreement, including all applicable state and federal laws rules, regulations and executive orders governing equal employment opportunity, immigration, and nondiscrimination, including the Americans with Disabilities Act.

## **8. General Provisions**

### **8.1. Legal Worker Requirements**

As required by A.R.S. § 41-4401, the Parties are prohibited from awarding a contract to a contractor who fails, or whose subcontractors fail, to comply with A.R.S. § 23-214(A), which requires that employers verify the employment eligibility of their employees through the federal e-Verify system. Pursuant to A.R.S. § 23-211, an “employer” is an independent contractor, a self-employed person, the State of Arizona or its political subdivisions, or an individual or type of organization that transacts business in the State of Arizona, that has a license issued by an agency in the state and that employs one or more employees in the State. Therefore, in signing and performing under this Agreement, Peoria and Tucson agree that:

- (a) Each warrants its compliance with all federal immigration laws and regulations that relate to their employees and their compliance with A.R.S. § 23-214(A).

- (b) A breach of a warranty under subsection (a) will be deemed a material breach of this Agreement that is subject to termination of this Agreement.
- (c) Each Party retains the legal right to inspect the papers of the other Party who performs services under this Agreement to ensure compliance with the warranty under subsection (a).

## 8.2. Organization Employment Disclaimer; No Agency

Neither Party's employees will be considered employees of the other Party. Neither Peoria or Tucson personnel will, by virtue of this Agreement, be entitled or eligible, by reason of this Agreement, to participate in benefits or privileges given or extended by the other Party to its employees.

Each Party will assume full responsibility for the actions of its personnel while performing services under this Agreement, and will be solely responsible for their supervision, daily direction and control, payment of salary (including income taxes and social security), wages, bonuses, retirement, withholdings, worker's compensation, unemployment compensation, other benefits, taxes and premiums.

Neither Party will have authority, express or implied, to act on behalf of the other Party in a capacity whatsoever as an agent. Neither Party will have authority, express or implied, pursuant to this Agreement to bind the other Party to any obligation whatsoever.

## 8.3. Cancellation for Nonappropriations

The Parties recognize that this Agreement depends upon appropriation of funds by the Peoria City Council and Tucson Mayor and Council. If either fails to appropriate the necessary funds, or if the appropriation for this Agreement is reduced, subject to the terms of Section 6.5 of this Agreement, either Party may reduce the scope of this Agreement if appropriate or cancel this Agreement without further duty or obligation. Each Party agrees to notify the other Party as soon as reasonably possible after the Party knows of the loss of funds.

## 8.4. Cancellation for Conflicts of Interest

No official, officer or employee of either Party will have a direct or indirect interest in this Agreement, nor participate in decisions relating to the Agreement as prohibited by law. The Parties hereto acknowledge that this Agreement is subject to cancellation pursuant to the provisions of A.R.S. § 38-511.

## 8.5. Covenant Against Contingent Fees

The Parties warrant that no person has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage, or

contingent fee; and that no member of the Peoria City Council, the Tucson City Council, or an employee of either of the Parties has an interest, financially or otherwise, in the Agreement.

#### 8.6. Indemnification

Each Party (as “indemnitor”) agrees to indemnify, defend, and hold harmless the other Party (as “indemnitee”) from and against any and all claims, losses, liability, costs, or expenses (including reasonable attorney fees) (hereinafter collectively referred to as “claims”) arising out of bodily injury of any person (including death) or property damage, but only to the extent that such claims which result in vicarious/derivative liability to the indemnitee, are caused by the act, omission, negligence, misconduct, or other fault of the indemnitor, its officers, officials, agents, employees, or volunteers.

#### 8.7. Non-liability of Officials and Employees

No official, officer or employee of Peoria or Tucson will be personally liable to the other Party, or a successor in interest, in the event of a default or breach by either Peoria or Tucson of its obligation under the terms of this Agreement.

#### 8.8. Non-waiver of Liability

Each Party recognizes that the other Party, as a public entity supported by tax monies, in execution of its public trust, cannot agree to waive a lawful or legitimate right to recover monies lawfully due it. Each Party agrees that it will not insist upon or demand a statement whereby the other Party agrees to limit in advance or waive a right the Party might have to recover actual lawful damages in a court of law under applicable Arizona law.

#### 8.9. Disputes

In the event of a dispute, claim, question, or disagreement arising from or relating to this Agreement or the breach thereof, the Parties hereto will use reasonable efforts to settle the dispute, claim, question, or disagreement. With the exception of the specific performance terms in Section 6.5 of this Agreement, if no notice of termination of this Agreement has been given by either Party to the other, if it is feasible under the terms of this Agreement each Party will continue to perform the obligations not related to the dispute required of it during the resolution of such dispute, unless enjoined or prohibited by a court of competent jurisdiction.

#### 8.10. Force Majeure

Except for sums due, neither Party will be deemed to be in default or liable for costs or damages resulting from its inability to perform its obligations under this Agreement due to any of the following: war; insurrection; strikes; lock-outs; riots; floods; earthquakes; fires; casualties; acts of God; acts of the public enemy; epidemics; quarantine restrictions; freight embargoes; lack of transportation; governmental restrictions or priority; unusually severe weather; inability (when either Party is faultless) of a contractor, subcontractor or supplier; acts of the other Party. The Party so affected will immediately give notice to the other party of the Force Majeure event. Upon such

notice, all obligations of the affected Party under this Agreement which are reasonably related to the Force Majeure event will be immediately suspended, and the affected Party will do everything reasonably possibly to resume performance as soon as practicable.

#### 8.11. Approvals by Peoria and Tucson

Wherever this Agreement requires Peoria or Tucson to approve a contract, document, plan, proposal, specification, drawing or other matter, such approval will not be unreasonably withheld or delayed with respect to all reasonable requests from the other Party.

#### 8.12. Governing Law

The laws of the State of Arizona will govern the interpretation and enforcement of this Agreement.

#### 8.13. Right of Parties

Nothing in this Agreement, whether express or implied, is intended to confer a right or remedy under or by reason of this Agreement on persons other than the Parties to this Agreement and their respective successors and permitted assigns, nor is anything in this Agreement intended to relieve or discharge the obligation or liability of a person who is not a Party to this Agreement, nor will provisions hereof give a person not a Party to this Agreement a right of subrogation or action over or against either Party to this Agreement.

#### 8.14. Severability

If a covenant, condition, term or provision of this Agreement is held to be illegal, or if the application thereof to will be judicially determined to be invalid or unenforceable, the remainder of this Agreement will not be affected.

#### 8.15. Survival

All representations, certifications, and warranties made in this Agreement will survive the execution and delivery of this Agreement.

#### 8.16. Legal Authorization

Attached hereto and incorporated herein is the written determination of each Party's legal counsel pursuant to A.R.S. § 11-952(D) that the Parties are authorized under the laws of Arizona to enter into this Agreement and that the Agreement is in proper form.

#### 8.17. Assignment

Neither Party may assign a right hereunder without the express, written, prior consent of the other Party.

#### 8.18. Entire Agreement

This Agreement along with its Exhibits constitutes and embodies the full and complete understanding and agreement of the Parties hereto and supersedes all prior understandings, agreements, discussions, proposals, bids, negotiations, communications, and correspondence, whether oral or written. No representation, promise, inducement or statement of intention has been made by either Party which is not embodied in this Agreement, and no Party hereto will be bound by or liable for a statement of intention not so set forth.

#### 8.19. Waivers

All waivers of the provisions of this Agreement must be in writing and signed by the appropriate authorities of Peoria and Tucson. Waiver by either Party of a breach or default of this Agreement by the other Party will not operate as a waiver of a previous or future default or breach of the same or a different clause of this Agreement.

***[Remainder of page left intentionally blank.  
Signatures follow on pages 15 and 16]***

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

CITY OF TUCSON  
REGINA ROMERO, Mayor

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

CITY OF PEORIA, ARIZONA,  
a municipal corporation  
HENRY DARWIN, City Manager

By: \_\_\_\_\_  
Henry Darwin

ATTEST:

\_\_\_\_\_  
Suzanne Mesich, City Clerk, City of Tucson

ATTEST:

\_\_\_\_\_  
Agnes Goodwine, City Clerk, City of Peoria

## INTERGOVERNMENTAL DETERMINATION

This Intergovernmental Agreement between the City of Tucson and the City of Peoria has been reviewed pursuant to A.R.S. §11-952 by the undersigned, who have determined that it is in the proper form and is within the power and authority granted under the laws of the State of Arizona to those Parties to this Agreement represented by the undersigned.

APPROVED AS TO FORM:

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Chris Avery, Principal Assistant City Attorney  
City of Tucson

APPROVED AS TO FORM:

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Emily Jurmu, City Attorney  
City of Peoria

**EXHIBIT A**  
**CITY OF PEORIA POINTS OF DELIVERY**

**EXHIBIT B  
CITY OF TUCSON  
SOUTHERN AVRA VALLEY STORAGE AND RECOVERY PROJECT**

**EXHIBIT C**  
**SCHEDULE OF WATER STORAGE FEES**  
**PAYABLE TO TUCSON BY PEORIA DURING TERM OF AGREEMENT**

<u>YEAR</u>	<u>OM&amp;R COST</u> <u>(PER ACRE FOOT)</u>	<u>CAPITAL COST</u> <u>(PER ACRE FOOT)</u>	<u>TOTAL WATER STORAGE</u> <u>FEE</u> <u>(PER ACRE FOOT)</u>
2023	\$21.00	\$50.00	\$71.00
2024	\$21.63	\$50.00	\$71.63
2025	\$22.28	\$50.00	\$72.28
2026	\$22.95	\$50.00	\$72.95
2027	\$23.64	\$50.00	\$73.64
2028	\$24.34	\$50.00	\$74.34
2029	\$25.08	\$50.00	\$75.08
2030	\$25.83	\$50.00	\$75.83
2031	\$26.60	\$50.00	\$76.60
2032	\$27.40	\$50.00	\$77.40
2033	\$28.22	\$50.00	\$78.22