

**NAUSP PARTIAL TEMPORARY ASSIGNMENT BETWEEN THE CITY OF
AVONDALE AND THE CITY OF PEORIA FOR A PORTION OF AVONDALE'S
STORAGE ENTITLEMENT**

1. PARTIES:

This Agreement ("Agreement") is made and entered into the _____ day of _____, 20____, by and between the CITY OF AVONDALE, an Arizona municipal corporation, ("Avondale"), and the CITY OF PEORIA, an Arizona municipal corporation ("Peoria"). Avondale and Peoria are referred to herein individually as "Party" or collectively as the "Parties."

2. RECITALS:

- 2.1 Municipal participants, including Avondale, entered into an intergovernmental agreement ("IGA") with the Salt River Valley Water Users' Association and the Salt River Agricultural Improvement and Power District in August 2004 to establish each Participants' respective rights for use and costs pertaining to the New River and Agua Fria River Underground Storage Project ("NAUSP"). The IGA designates the Salt River Valley Water Users' Association ("SRP") as the operating agent ("Operating Agent") of NAUSP.
- 2.2 Through a November 2005 Agreement between Peoria and SRP conveying a portion of SRP's NAUSP Storage Entitlement to Peoria, Peoria became a Participant of the IGA.
- 2.3 As Participants, Avondale and Peoria have rights for storing waters within NAUSP. Since at least 2008, Avondale had a 10% annual Storage Entitlement. In 2023, Avondale purchased an additional 18% annual Storage Entitlement from the City of Chandler, therefore Avondale now owns 28% annual Storage Entitlement. Peoria holds a 20% annual Storage Entitlement.
- 2.4 The IGA contemplates in Sections 30.1 and 30.2 a temporary transfer by one Participant to another Participant of a portion of Storage Entitlement

within NAUSP. Such a transaction is deemed an assignment of Storage Entitlement.

- 2.5 The total monthly Operating Capacity available at NAUSP varies significantly from the permitted Storage Capacity. As an example, at the origination of this Agreement, the annual permitted Storage Capacity of NAUSP is 75,000 acre-feet per year (“AF/year”) while the total monthly Operating Capacity based on the physical ability to recharge water at NAUSP has most consistently been 2,400 acre-feet (“AF”) per month, or 28,800 AF per year.
- 2.6 Since 2013 and consistent with the IGA, Peoria has either been assigned a portion of other NAUSP Participants’ Storage Entitlement or leased Declared Firm Lease Capacity for purposes of storing additional waters at NAUSP beyond the volume that Peoria’s 20% Storage Entitlement accommodates.
- 2.7 Peoria desires to enter into a multi-year agreement for an assignment of a portion of Avondale’s NAUSP Storage Entitlement.
- 2.8 Avondale is willing to assign a portion of its NAUSP Storage Entitlement to Peoria for the duration of the Agreement.

3. AGREEMENT:

NOW THEREFORE, in consideration of the foregoing, and other good and valuable consideration, Avondale and Peoria agree as follows:

4. INCORPORATION OF RECITALS:

Section 1, PARTIES, and Section 2, RECITALS, above are hereby incorporated into and expressly made part of this Agreement.

5. DEFINITIONS:

Unless otherwise specified herein, all defined terms shall be consistent with those defined in Section 4 of the IGA, as amended.

6. PARTIAL ASSIGNMENT:

6.1 Avondale agrees to assign to Peoria a monthly amount of Storage Entitlement equivalent to 5%. This Agreement shall be deemed a partial temporary assignment consistent with the provisions contained within the IGA. Additionally, consistent with the terms of Section 30.1 of the IGA, this assignment shall be deemed a temporary transfer of Storage Entitlement.

6.2 The Parties acknowledge that the total monthly available Operating Capacity may vary month to month. Parties may convene and mutually agree in writing to temporarily alter the percent of Storage Entitlement being assigned, as stated in Section 6.1, on a month-to-month basis.

6.3 Consistent with Section 30.2 of the IGA, this Agreement is not subject to approval of the NAUSP Committee.

7. TERM OF AGREEMENT:

7.1 This Agreement shall become effective on May 1, 2024 and when executed by both Parties and shall remain in effect through April 30, 2026, unless the Parties elect to discontinue or suspend the Agreement prior to that date.

7.2 After the initial term, defined by Section 7.1, the Agreement shall automatically extend in one-year increments, beginning May 1, 2026, unless one Party formally notifies the other of its intent to not extend or to temporarily suspend this Agreement. To exercise the discontinuance or suspension, a party must notify the other Party at least sixty (60) days in advance.

8. PEORIA'S RESPONSIBILITY FOR COSTS:

- 8.1 In consideration of Avondale's assignment of a portion of its Storage Entitlement, and regardless of the volume of water that Peoria stores, Peoria agrees to pay to Avondale (a) 5% of the reconciled Operating Costs invoiced to Avondale by SRP; or, (b) that percentage agreed upon by the parties pursuant to Section 6.2 in the months it applies.
- 8.2 In the event the Parties mutually agree to temporarily alter the Storage Entitlement percentage being assigned per Section 6.2, payment owed by Peoria to Avondale will be adjusted based on the percentage of Storage Entitlement assigned and the number of months the alternative assignment percentage is in effect.
- 8.3 Costs in Sections 8.1 and 8.2 owed by Peoria will be in addition to the Operating Costs that are Peoria's responsibility due to its owned Storage Entitlement in NAUSP.
- 8.4 In the event the NAUSP Committee and Operating Agent agree that non-recurring, one-time extraordinary maintenance costs are necessary above and beyond normal year-to-year Operating Costs, these extraordinary costs will not be included in the payments detailed in Section 10 and will not be owed by Peoria.

9. CONDITIONS RELATING TO STORAGE:

Peoria shall coordinate with the Operating Agent concerning the methodology for the storage of its water.

10. BILLING AND PAYMENTS:

- 10.1 Consistent with Section 12 of the IGA, the Operating Agent shall invoice each participant in the IGA directly and in advance for its proportional share of Operating Costs. The Operating Agent does not invoice a participant for any Storage Entitlement assigned from another participant.

- 10.2 Upon receipt of the SRP Fiscal Year (“FY”; May 1 – April 30) invoice from the Operating Agent, in the following 60 days, or as mutually agreed, Avondale shall invoice Peoria using the SRP FY actual and budgeted Operating Costs as detailed in Section 10.3.
- 10.3 Peoria will pay Avondale 5% of the SRP FY budgeted Operating Costs, prorated to the percentage of months of the SRP FY this Agreement is in effect. Upon receipt of the Operating Agent invoice for the SRP FY, which includes the preceding SRP FY budget reconciliation, if the Agreement was in effect for the preceding SRP FY and actual Operating Costs exceeded budgeted costs, Avondale will invoice Peoria for the proportionate share associated with the assigned capacity from the preceding SRP FY, in addition to any adjustments necessitated by Section 6.2. If actual Operating Costs are less than budgeted costs, Avondale shall deduct Peoria’s proportionate reconciliation share amount from the current FY amount associated with the assigned capacity, OR Peoria will invoice Avondale for the proportionate share associated with the assigned capacity, in addition to any adjustments necessitated by Section 6.2. Parties may mutually agree to include any amount owed under this section as part of a future invoice between the Parties.
- 10.4 Peoria and Avondale agree to pay any invoice received pursuant to this section within thirty (30) days of receipt. All invoices shall be paid in accordance with NAUSP IGA Section 13.
- 10.5 In the event this Agreement is discontinued, any credit Peoria has with Avondale for months Peoria was not able to utilize Avondale’s Storage Entitlement due to the discontinuation will be reimbursed in a mutually agreeable manner after timely consultation between the Parties.

11. PROCEDURE FOR SCHEDULING STORAGE CAPACITY:

Peoria shall be responsible for notifying Avondale of its order to NAUSP for the following month, specifying the volume of water to be stored pursuant to this Agreement.

12. AUTHORIZATIONS AND APPROVALS:

Peoria shall be responsible for obtaining, at its own expense, any permits, authorizations and approvals required for the underground storage and recovery of water in the NAUSP or for Peoria's performance under this Agreement.

13. LIABILITY:

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

14. INSURANCE

The Parties are self-insured and will cover all requirements as provided in this Agreement.

15. DEFAULT:

15.1 Peoria agrees to pay all obligations due and owing pursuant to the terms of this Agreement. A failure by Peoria or Avondale to adhere to the covenants and obligations to be kept and performed by it shall be an act of default under this Agreement.

15.2 In the event of a default by Peoria or Avondale, then, within thirty (30) days following notice of such default either Party may cure the default either by advancing the necessary funds and/or rendering the necessary performance. Such notice shall specify the existence and nature of such default. If such default is not remedied within the time specified, the non-defaulting Party may terminate this Agreement upon 24 hours written notice.

16. UNCONTROLLABLE FORCES:

Neither Party to this Agreement shall be considered in default in the performance of any of its obligations under this Agreement (other than obligations of Peoria to pay costs and expenses) when a failure of performance is due to Uncontrollable

Forces. The term "uncontrollable forces"; shall mean any cause beyond the control of the Party unable to perform such obligation, including, but not limited to, failure of or threat of failure of facilities, flood, earthquake, storm, fire, lightning, and other natural catastrophes, epidemic, war, riot, civil disturbance or disobedience, strike, labor dispute, labor or material shortage, sabotage, government priorities and restraint by court order or public authority, and action or non-action by, or failure to obtain the necessary authorizations or approvals from any governmental agency or authority not a Party to this Agreement, which by exercise of due diligence, it shall be unable to overcome.

17. RESOLUTION OF DISPUTES:

Resolution of disputes pertaining to this Agreement shall be done consistent with Section 22 of the IGA.

18. ACTION PENDING RESOLUTION OF DISPUTES:

Pending the resolution of a dispute, each Party shall proceed, to the extent legally permissible, in a manner consistent with this Agreement, and shall make payments required in accordance with the applicable provisions of this Agreement. Any amount paid by a Party pursuant to this Section 18 during the course of such dispute shall be subject to refund and adjustment upon a final resolution of any dispute involving an amount due.

19. GOVERNING LAW:

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

20. BINDING OBLIGATIONS:

All of the obligations set forth in this Agreement shall bind Avondale and its successors and assigns. The Parties agree that this Agreement shall not be assigned without the written request and the written authorization by the other Party. In event of a violation of this Section 20, the other Party shall have the right to terminate this Agreement.

21. NOTICES:

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

City of Avondale

c/o Water Resources Manager
399 E. Lower Buckeye Road
Avondale, AZ 85323

c/o City Attorney's Office
11465 W Civic Center Drive
Avondale, AZ 85323

City of Peoria

c/o Water Services Director
9875 N. 85th Avenue
Peoria, AZ 85345

c/o City Attorney's Office
8401 W. Monroe Street
Peoria, AZ 85345

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

22. THIRD PARTY BENEFICIARIES:

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

23. WAIVER:

The waiver by either Party of a breach of any term, covenant, or condition in this Agreement shall not be deemed a waiver of any other term, covenant, or condition or any subsequent breach of the same or any other term, covenant, or condition of this Agreement.

24. HEADINGS:

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

25. ENTIRE AGREEMENT:

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

26. CONFLICT OF INTEREST:

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

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

CITY OF AVONDALE

Acknowledged and approved:

Name: Ron Corbin
Title: City Manager, City of Avondale
Date: ___/___/_____

Attest and Countersign:

Name:
Title: City Clerk, City of Avondale
Date: ___/___/_____

Approved as to form and within the Power and Authority granted under the laws of the State of Arizona to the City of Avondale

Name:
Title: City Attorney, City of Avondale
Date: ___/___/_____

CITY OF PEORIA

Acknowledged and approved:

Name: Henry Darwin
Title: City Manager, City of Peoria
Date: ___/___/_____

Attest and Countersign:

Name: Agnes Goodwine
Title: City Clerk, City of Peoria
Date: ___/___/_____

Approved as to form and within the Power and Authority
granted under the laws of the State of Arizona to the City
of Peoria

Name: Emily Jurmu
Title: City Attorney, City of Peoria
Date: ___/___/_____