

ASSIGNMENT AND TRANSFER AGREEMENT
BETWEEN
CENTRAL ARIZONA WATER CONSERVATION DISTRICT
AND
CITY OF PEORIA

This Assignment and Transfer Agreement ("**Agreement**") is between the Central Arizona Water Conservation District, an Arizona public improvement district, as assignor/transferor ("**CAWCD**") and City of Peoria, Arizona, a municipal corporation in Arizona, as assignee/transferee ("**City**").

1. RECITALS

- 1.1 CAWCD is a Multi-County Water Conservation District operating under Title 48, Ch. 22, Arizona Revised Statutes. CAWCD operates the Central Arizona Groundwater Replenishment District ("**CAGRD**") pursuant to Title 48, Ch. 22, Art. 4. City is an Arizona municipal corporation, operating under Title 9, Arizona Revised Statutes.
- 1.2 New River Utility Company ("**NRUC**") was an investor owned private water company operating as a public service corporation. NRUC held a "Subcontract Among the United States, The Central Arizona Water Conservation District, and New River Utility Company, Providing for Water Service, Central Arizona Project" being Subcontract No. 5-07-30-W0082 ("**NRUC M&I Subcontract**"). By agreement dated July 12, 2007, NRUC assigned its NRUC M&I Subcontract to CAWCD in exchange for CAWCD's assumption of NRUC's replenishment obligations by CAGRD. The capacity of the NRUC M&I Subcontract was for 1,885 acre feet.
- 1.3 CAWCD entered into that certain "Supplemental Contract Between the United States and the Central Arizona Water Conservation District for Delivery of Central Arizona Project Water" dated August 14, 2007 ("**CAWCD Supplemental Contract**") wherein CAWCD acquired the right to delivery of Central Arizona Project water from certain transferring entities, including NRUC.
- 1.4 City is a municipal water provider, providing water utility service to its customers within its service area. City holds a "Subcontract Among the United States, The Central Arizona Water Conservation District, and City of Peoria, Providing for Water Service, Central Arizona Project" originally dated May 25, 2007 and as amended, being Subcontract No. 07-XX-30-W0480 ("**City M&I Subcontract**"). The City M&I Subcontract is currently in the amount of 25,236 acre-feet per year of Central Arizona Project Municipal & Industrial Priority Water ("**CAP M&I Priority Water**").
- 1.5 City obtained a Designation of Assured Water Supply ("**DAWS**") from the Arizona Department of Water Resources ("**ADWR**") in 1998. As part of the DAWS, City was required to enter into a Member Service Area Agreement with CAGRD for replenishment of "excess groundwater" used within the City service area.
- 1.6 By 2008, City had constructed infrastructure necessary to take sufficient delivery of Central Arizona Project water and other non-groundwater supplies to allow City to apply for modification of its DAWS and termination of its CAGRD Member Service Area Agreement. City entered into that certain "Revocation of Member Service Area Agreement Between Central Arizona Water Conservation District and City of Peoria" dated May 5, 2011. Upon that termination, City no longer was obligated to CAGRD for

groundwater replenishment obligations within the City service area. ADWR issued a new DAWS to City on September 29, 2010 (ADWR No. 86-400679.0001) allowing City to operate as a designated assured water supply provider without Member Service Area replenishment through CAGRD.

- 1.7 By Docket Entry dated August 5, 2016, the Arizona Corporation Commission approved the acquisition of all of the water utility assets of NRUC by City, being Docket No. W-01737A-15-0380, Decision No. 75690. As recited therein, City purchased all of the stock of NRUC in October, 2015. City took possession of the NRUC water delivery system on November 5, 2015 and has been continuously operating the system since that date as part of the larger City service area. The Certificate of Convenience & Necessity describing the service area of NRUC (and incorporated into the NRUC M&I Subcontract and the CAWCD Supplemental Contract) ceased to exist, and City assumed all obligations for water utility service within that former water service area, including any groundwater replenishment obligation.
- ~~1.8~~ By City assuming all water service obligations of NRUC in 2015 under its Designation of Assured Water Supply (DWR No. 86-400679.0001), CAGRD was relieved, commencing in calendar year 2016, of any and all current and future obligations for the Member Lands located within the service area identified under Exhibit A, Map 4 (NRUC) of the CAWCD Supplemental Contract. Since January 1, 2016, City has served the NRUC service area with renewable supplies from its own prior portfolio. ~~while CAGRD members have benefitted from the subcontract designated to serve the NRUC service area.~~

2. AGREEMENT FOR ASSIGNMENT AND TRANSFER

- 2.1 CAWCD and City incorporate the Recitals above as part of this Agreement and agree that they represent true statements of fact. All Exhibits to this Agreement are incorporated herein by reference.
- 2.2 Pursuant to the CAWCD Supplemental Contract, Subsection 5.5, CAWCD agrees to transfer to City 1,885 acre-feet per annum of CAP M&I Priority Water. The transfer will be accomplished through an amendatory CAP M&I water service subcontract among CAWCD, the United States and City of Peoria, amending the City M&I Subcontract by increasing allowable diversion by 1,885 acre-feet, and an amendment to the CAWCD Supplemental Contract reducing the allowed CAWCD diversions by 1,885 acre-feet.
- 2.3 City agrees to pay CAWCD the estimated sum of \$1,221,652.47, representing the costs associated with the transfer of the CAP M&I Priority Water through December 31, 2021, pursuant to the CAWCD Policy Regarding the Relinquishment and Transfer of CAP M&I Subcontract Allocations, as amended November 7, 2002..
 - a) Should notification by Reclamation that the amendatory contracts are fully executed per Subparagraph 3.7 occur before December 31, 2021, the transfer fee shall be reduced by \$2,100.00 per month from \$1,221,652.47 for each month from the notification to December 31, 2021. For example, if notification from Reclamation is received on July 14, 2021, then the transfer fee is reduced by \$12,600.00 (6 months x \$2,100.00).
 - b) Should notification by Reclamation that the amendatory contracts are fully executed per Subparagraph 3.7 occur after December 31, 2021, the Parties agree to consult in a timely manner on a mutually acceptable inclusion of additional interest in the transfer fee consistent with the CAWCD Board Policy regarding transfers of CAP M&I subcontract allocations amended November 7, 2002.

- 2.4 CAWCD and City shall enter into an Agreement for Purchase and Sale of Long-Term Storage Credits in the form attached hereto as Exhibit A.
- 2.5 CAWCD and City shall cooperate in good faith and with all reasonable diligence with ADWR and the United States Bureau of Reclamation (“**Reclamation**”) to process the transfer through these respective entities toward final conclusion and execution of the amended City M&I Subcontract.
- 2.6 Should Peoria receive delivery of any M&I Priority Subcontract water pursuant to this Agreement for which CAWCD has previously paid the CAP capital charge, Peoria agrees to reimburse CAWCD on a per acre-foot basis at the capital charge rate paid by CAWCD for the water Peoria received. For example, if CAWCD pays the CAP capital charge associated with the 1,885 acre-feet for calendar year 2021 as assessed in December 2020 and June 2021, but the completion of this agreement allows Peoria to take delivery of 1,700 acre-feet within calendar year 2021, Peoria will reimburse CAWCD at the 2021 CAP capital charge rate multiplied by 1,700.

3. REQUIRED ACTIONS AND CONDITIONS PRECEDENT TO TRANSFER

- 3.1 CAWCD and City agree that the following actions, taken in the order set forth below, are required to effect the transfer of the CAP M&I Priority Water to City as contemplated here.
- 3.2 Upon the Effective Date of this Agreement (see signature page below), CAWCD and City shall compile a Request for Review for submission to ADWR pursuant to A.R.S. § 45-107(D) and ADWR’s CR6 Policy Statement “Revised Policy Regarding Central Arizona Project Municipal and Industrial Subcontract Entitlements.” CAWCD and City shall cooperate on the preparation of the Request for Review, including the water management plan aspects thereof, and shall meet with ADWR as necessary before and after submission of same to expedite and facilitate ADWR’s review. **Condition Precedent: Final letter from ADWR to Reclamation recommending approval of the proposed transfer (“ADWR Recommendation”).**
- 3.3 Upon filing the Request for Review with ADWR, CAWCD and City shall advise Reclamation of the pending Request for Review and shall meet or confer with Reclamation, as necessary, to advise or answer questions regarding the proposed transfer while the Request for Review is pending with ADWR. The consultation shall include a discussion of what form the ultimate amendatory contracts between Reclamation and CAWCD/City may take, and the necessity for judicial validation of same, if any. **Condition Precedent: Initial consultation with Reclamation regarding proposed transfer.**
- 3.4 Upon receiving the ADWR Recommendation, CAWCD and City shall cooperate with Reclamation to commence review of the proposed transfer under applicable federal law, including any review required pursuant to the National Environmental Policy Act (“**NEPA**”). City shall timely pay to Reclamation any required funding for federal review, including NEPA, by Reclamation, including any deposit and publishing costs required by Reclamation, and shall enter into a standard form of required letter agreement with Reclamation to effect that payment if necessary. **Condition Precedent: Notification from Reclamation to Publish Public Notice of Proposed Transfer and Proof of Completion of Publication by the City.**
- 3.5 Upon notification by Reclamation that draft forms of amendments to the City M&I Subcontract and the CAWCD Supplemental Contract are available, CAWCD and City shall timely review same, understanding and agreeing that such contracts are standard forms

prepared by Reclamation with standard terms and provisions that are not subject to negotiation. CAWCD and City shall approve such drafts if they are accurate and state terms and conditions that are standard among similarly situated parties contracting with Reclamation. CAWCD and City shall work with Reclamation to prepare the amended contracts in final form. **Condition Precedent: Approval of draft forms of amendatory contracts by CAWCD and City and Preparation of final forms.**

- 3.6 Upon approval of the draft forms of amendatory contracts and presentation of final forms by Reclamation, CAWCD and City shall execute same, taking all necessary actions, including CAWCD Board and City Council resolutions and approvals. **Condition Precedent: Formal Approval by Resolution and Execution of Amendatory Contracts by CAWCD and City.**
- 3.7 Upon approval and execution of the amendatory contracts, CAWCD and City shall jointly submit the original documents to Reclamation, Lower Colorado River Region, for formal approval by the Reclamation Regional Director. CAWCD and City shall request that Reclamation execute the amendatory contracts and notify CAWCD and City of completion, but hold the contracts until CAWCD and City notify Reclamation that all conditions precedent have been met. **Condition Precedent: Joint letter from CAWCD and City transmitting executed amendatory contracts as required by this subparagraph.**
- 3.8 Upon notification by Reclamation that the amendatory contracts are fully executed, City shall, within thirty (30) calendar days, pay to CAWCD in good and immediate funds, by commercially reasonable payment method as specified by CAWCD, the amount required by Subparagraph 2.3 above. **Condition Precedent: City payment to CAWCD of the required amount of transfer fee.**
- 3.9 Upon notification by Reclamation that the amendatory contracts are fully executed, CAWCD and City shall execute and deliver to each other a fully executed copy of the Agreement for Purchase and Sale of Long-Term Storage Credits in substantially the form attached hereto as Exhibit A. **Condition Precedent: Execution and Delivery of Agreement for Purchase and Sale of Long-Term Storage Credits.**
- 3.10 Upon completion and fulfillment of all conditions precedent described above, City and CAWCD shall jointly request delivery of the amended contracts from Reclamation and this Agreement shall be deemed complete and the transfer effective, subject only to judicial validation as described below.

4. Judicial Validation

- 4.1 To the extent required by law or by Reclamation, City shall process the judicial validation of any amendatory contract with Reclamation and shall pursue same to completion with diligence.
- 4.2 If judicial validation is not required by law or by Reclamation, City, CAWCD and Reclamation shall so agree and this Agreement shall be deemed complete.

5. Termination Upon Failure of Transfer

- 5.1 This Agreement shall endure until all of the conditions precedent actions have been met and the transfer completed, including judicial validation if necessary.
- 5.2 In the event that either ADWR or Reclamation provides notice that either or both will not approve the transfer as contemplated, CAWCD and City shall meet and confer regarding

the appropriate course of action. If the reason for denial of the transfer is due to matters that can be resolved by commercially reasonable action either by CAWCD or City, or both, the party or parties being required to take action shall do so in good faith to allow the transfer to proceed.

- 5.3 In the event that there is a refusal to process the transfer due to requirements or impediments imposed by either ADWR or Reclamation that cannot be overcome, despite reasonable diligence and accommodation by one party or both parties, either party may serve written notice to the other to declare that the intent of this Agreement is not feasible. Unless contested by the other party with thirty (30) calendar days, this Agreement shall terminate. If contested, the contesting Party may seek to resolve the impasse and re-instate the transfer process within six (6) months from the declaration of non-feasibility. If not resolved within that time, this Agreement shall terminate.
- 5.4 CAWCD and City agree to use best efforts to overcome any requirement or impediment imposed by ADWR or Reclamation consistent with the intent of this Agreement and shall only seek termination of the Agreement prior to completion in circumstances where the intent of this transfer is not rationally feasible.

6. MISCELLANEOUS

- 6.1 Further Acts. The Parties agree to perform any additional acts and execute any additional documents reasonably necessary to effectuate the purposes of this Agreement.
- 6.2 Controlling Law and Venue. This Agreement and all questions relating to its validity, interpretation, performance and enforcement shall be governed by applicable Arizona and federal law. Any action to resolve any dispute regarding this Agreement shall be taken in a state court of competent jurisdiction located in Maricopa County, Arizona.
- 6.3 Interpretation. The Parties agree that neither Party shall be deemed the drafter of this Agreement and, in the event this Agreement is ever construed by a court of law or equity, such court shall not construe this Agreement or any provision hereof against either Party as drafter of this Agreement.
- 6.4 Captions. All captions, titles, or headings in this Agreement are used for the purpose of reference and convenience only and are not intended to define, limit or describe the scope or intent of any provision of this Lease.
- 6.5 Non-Business Days. If the date for any action under this Agreement falls on a Saturday, Sunday or a day that is a legal holiday, then the relevant date shall be extended automatically until the next day that is not a Saturday, Sunday or holiday.
- 6.6 Amendments. This Agreement may be modified, amended or revoked only by the express written agreement of both Parties hereto.
- 6.7 Entire Agreement. This Agreement constitutes the entire agreement between the parties and no understandings or obligations not expressly set forth in this Agreement are binding upon the parties.

- 6.8 Severability. If any provision or clause of this Agreement or application thereof to any person or circumstance is held invalid or unenforceable, such invalidity or unenforceability shall not affect the other provisions, clauses or applications of this Agreement which can be given effect without the invalid or unenforceable provision, clause or application, and to this end, the provisions and clauses of this Agreement are severable; provided, however, that no provision or clause shall be severed if the severance would deprive any party of its material benefits under this Agreement.
- 6.9 Attorneys' Fees. Except as otherwise set forth in this Agreement, the Parties shall bear their own attorneys' fees and costs incurred in the preparation and implementation of this Agreement. In the event that any Party commences an action to enforce or interpret this Agreement, or for any other remedy based on or arising from this Agreement, the prevailing party therein shall be entitled to recover its reasonable and necessary attorneys' fees and costs incurred. For the purposes of this provision the "prevailing party" shall be that party which has been successful with regard to the main issue, even if that Party did not prevail on all issues; however, the court shall retain discretion to limit the award of fees and costs to those reasonably and necessarily incurred on those issues on which the prevailing party was successful.
- 6.10 Right to Enter into Agreement. Each party hereby warrants and represents that it has the full right and lawful authority to enter into this Agreement.
- 6.11 Waiver. No delay in exercising any right or remedy shall constitute a waiver unless such right or remedy is waived in writing signed by the waiving party. A waiver by any party of any right or remedy hereunder shall not be construed as a waiver of any other right or remedy, whether pursuant to the same or a different term, condition or covenant.
- 6.12 Conflicts of Interest. The parties to this Agreement are hereby notified of A.R.S. § 38-511.
- 6.13 Notices. Except as otherwise required by law, any notice given in connection with this Agreement must be in writing and must be given by personal delivery, overnight delivery, or United States certified or registered mail. Any such notice must be addressed to the appropriate party at the following address (or at any other address as a party may hereafter designate by written notice given as required by this paragraph):

CAWCD:

For delivery use: Central Arizona Water Conservation District
Attn: General Manager
23636 N. 7th Street
Phoenix, AZ 85024

For U.S. Mail use: Central Arizona Water Conservation District
Attn: General Manager
P.O. Box 43020
Phoenix, AZ 85080-3020

City of Peoria:

Ted Mariscal
Assistant City Attorney
Office of the City Attorney
City of Peoria
8401 West Monroe Street
Peoria, AZ 85345

Arizona Department of Water Resources:

Arizona Department of Water Resources
Colorado River Management
1100 West Washington, Suite 310
Phoenix, Arizona 85007

United States Bureau of Reclamation:

United States Bureau of Reclamation
Contracts and Repayment
Lower Colorado Regional Office
PO Box 61470
Boulder City, NV 89006-1470

Notice is deemed to have been given on the date on which notice is personally delivered, delivered to an overnight delivery service, or mailed. Notice is deemed to have been received on the date on which the notice is actually received or delivery is refused. The Parties may designate a new contact person under this provision for notices or invoices or change the address identified above by notifying the other Party in writing.

- 6.14 Binding Effect. This Agreement and the rights and obligations created hereby shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns, if any.
- 6.15 No Third Party Beneficiaries. This Agreement is not intended to create any right or benefit to anyone other than CAWCD and City. This Agreement does not create any third party beneficiary rights or causes of action.
- 6.16 Force Majeure. Each party shall be excused from performance under this Agreement while and to the extent that it is unable to perform, for any cause beyond its reasonable control. Such causes shall include, but not be restricted to, fire, drought, storm, flood, earthquake, explosion, war, labor disputes, total or partial failure of transportation or delivery facilities, shortage of labor, raw materials or supplies, interruption of utilities or power, and any act of government or military authority. In the event either party is rendered unable wholly or in part by force majeure to carry out its obligations under this Agreement then the other party not affected by force majeure shall be excused from its performance during the pendency of the force majeure.

Wherefore, CAWCD and City Execute this Agreement to be Effective this ____ day of _____, 2020:

CENTRAL ARIZONA WATER CONSERVATION DISTRICT

By: _____
Theodore Cooke

Its: General Manager

Approved as to form:

Jay Johnson, CAP General Counsel

CITY OF PEORIA, an Arizona municipal corporation

By: _____

Its: Mayor

Approved as to form:

Vanessa P. Hickman, City Attorney

Attest:

City Clerk

EXHIBIT A

**AGREEMENT FOR PURCHASE AND SALE OF
LONG-TERM STORAGE CREDITS**