

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION

CONTRACT BETWEEN THE UNITED STATES AND THE
CENTRAL ARIZONA WATER CONSERVATION DISTRICT
FOR THE DELIVERY OF WATER AND REPAYMENT OF COSTS OF THE
CENTRAL ARIZONA PROJECT

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1. PREAMBLE: THIS AMENDMENT NO. 2 TO CONTRACT NO. 14-06-W-245, hereinafter referred to as "Amendment No. 2" made this 30th day of November, 2007, pursuant to the Act of Congress approved June 17, 1902 (32 Stat. 388), and acts amendatory thereof or supplementary thereto, including but not limited to the Boulder Canyon Project Act enacted December 21, 1928 (45 Stat. 1057), as amended, the Reclamation Project Act of August 4, 1939 (53 Stat. 1187), as amended, and particularly the Colorado River Basin Project Act of September 30, 1968 (82 Stat. 885), as amended, and the Arizona Water Settlements Act (118 Stat. 3478), all of which are commonly known and referred to as Federal Reclamation law, between the UNITED STATES OF AMERICA, hereinafter called the "United States," and the CENTRAL ARIZONA WATER CONSERVATION DISTRICT, hereinafter called "CAWCD," a multi-county water conservation district organized under the laws of Arizona with its principal place of business in Phoenix, Arizona; the United States and CAWCD are each individually sometimes hereinafter called "Party" and sometimes collectively called "Parties";

WITNESSETH THAT:

2. EXPLANATORY RECITALS:

2.1 WHEREAS, the United States and CAWCD entered into a contract entitled “Contract for the Delivery of Water and Repayment of Costs of the Central Arizona Project,” Contract No. 14-06-W-245, dated December 15, 1972, wherein CAWCD is defined as the “Contractor”;

2.2 WHEREAS, the United States and CAWCD entered into Amendment No. 1 to Contract No. 14-06-W-245 on December 1, 1988, which supersedes and replaces the 1972 contract, and which is hereinafter referred to as the Master Contract;

2.3 WHEREAS, pursuant to the Master Contract, the United States and CAWCD entered into water service subcontracts with individual entities for delivery and use of Central Arizona Project municipal and industrial water (CAP M&I Water);

2.4 WHEREAS, on December 10, 2004, Congress enacted the Arizona Water Settlements Act, Pub. L. 108-451, hereinafter referred to as the “Settlements Act”;

2.5 WHEREAS, the Settlements Act was enacted to provide for adjustments to the CAP in Arizona, to authorize the Gila River Indian Community water rights settlement, to reauthorize and amend the Southern Arizona Water Rights Settlement Act of 1982, and for other purposes;

2.6 WHEREAS, Title I of the Settlements Act, in Section 104(d), requires the Secretary of the Interior to offer to enter into subcontracts or to amend all CAP contracts and subcontracts in effect as of December 10, 2004, to incorporate the provisions of Section 104(d) of the Settlements Act;

2.7 WHEREAS, one of the provisions in Section 104(d) of the Settlements Act is that such amended contract or subcontract (1) shall be for permanent service (within the meaning of section 5 of the

Boulder Canyon Project Act of 1928 (43 U.S.C. 617(d)); (2) shall have an initial delivery term that is the greater of – (i) 100 years; or (ii) a term- (I) authorized by Congress; or (II) provided under the appropriate CAP contract or subcontract existing on the date of enactment of the Settlements Act;

2.8 WHEREAS, Article 8.2 of the Master Contract provides for a term of permanent service within the meaning of section 5 of the Boulder Canyon Project Act of 1928 (43 U.S.C. 617(d)) and therefore is in conformance with section 104(d) of the Settlements Act; and

2.9 WHEREAS, the United States and CAWCD desire to amend the Master Contract to eliminate any inconsistencies between the Master Contract and the CAP M&I Water subcontracts amended pursuant to the Settlements Act and to ensure the Master Contract conforms to the Settlements Act;

NOW THEREFORE, in consideration of the mutual and dependent covenants herein contained, the Parties agree as follows:

3. DEFINITIONS ADDED TO THE MASTER CONTRACT: The following definitions are hereby added to Article 5 of the Master Contract entitled, “Definitions”:

5.39 “Available CAP Supply” shall mean for any given Year all Fourth Priority Water available for delivery through the Central Arizona Project, water available from CAP dams and reservoirs other than Modified Roosevelt Dam, and return flows captured by the Secretary for CAP use.

5.40 “Fourth Priority Water” shall mean Colorado River water available for delivery within the State of Arizona for satisfaction of entitlements: (1) pursuant to contracts, Secretarial reservations, perfected rights, and other arrangements between the United States and water users in the State entered into or established subsequent to September 30, 1968, for use on Federal, State, or privately owned lands in the State (for a total quantity not to exceed 164,652 acre-feet of diversions annually); and (2) after first providing

for the delivery of water under 43 U.S.C § 1524(e), pursuant to the Master Contract for the delivery of Colorado River water for the CAP including use of Colorado River water on Indian lands.

4. AMENDMENT OF “DELIVERY OF WATER” ARTICLE NO. 8: Subarticle No. 8.11 of the Master Contract entitled, “Priority in Case of Shortage.” is hereby deleted in its entirety and superseded and replaced with the following:

8.11 Priority in Case of Shortage. On or before June 1 of each Year, the Secretary shall announce the Available CAP Supply for the following Year in a written notice to the Contractor.

(a) Prior to January 1, 2044, a time of shortage shall exist in any Year in which the Available CAP Supply for that Year is insufficient to satisfy all of the entitlements set forth in subparagraphs (i) through (iii) below:

- (i) Three hundred forty-three thousand seventy-nine (343,079) acre-feet of CAP Indian Priority Water;
- (ii) Six hundred thirty-eight thousand eight hundred twenty-three (638,823) acre-feet of CAP M&I Priority Water; and
- (iii) Up to one hundred eighteen (118) acre-feet of CAP M&I Priority Water converted from CAP NIA Priority Water under the San Tan Irrigation District’s CAP Subcontract.

(b) On or after January 1, 2044, a time of shortage shall exist in any Year in which the Available CAP Supply for that Year is insufficient to satisfy all of the entitlements as set forth in subparagraphs (i) through (iv) below:

- (i) Three hundred forty-three thousand seventy-nine (343,079) acre-feet of CAP

Indian Priority Water;

- (ii) Six hundred thirty-eight thousand eight hundred twenty-three (638,823) acre-feet of CAP M&I Priority Water;
 - (iii) Up to forty-seven thousand three hundred three (47,303) acre-feet of CAP M&I Priority Water converted from CAP NIA Priority Water pursuant to the Hohokam Agreement; and
 - (iv) Up to one hundred eighteen (118) acre-feet of CAP M&I Priority Water converted from CAP NIA Priority Water under the San Tan Irrigation District's CAP Subcontract.
- (c) Initial distribution of water in time of shortage.
- (i) If the Available CAP Supply is equal to or less than eight hundred fifty-three thousand seventy-nine (853,079) acre-feet, then 36.37518% of the Available CAP Supply shall be available for delivery as CAP Indian Priority Water and the remainder shall be available for delivery as CAP M&I Priority Water.
 - (ii) If the Available CAP Supply is greater than eight hundred fifty-three thousand seventy-nine (853,079) acre-feet, then the quantity of water available for delivery as CAP Indian Priority Water shall be determined in accordance with the following equation and the remainder shall be available for delivery as CAP M&I Priority Water:

$$I = \{[32,770 \div (E - 853,079)] \times W\} + (343,079 - \{[32,770 \div (E - 853,079)] \times E\})$$

where

I = the quantity of water available for delivery as CAP Indian Priority Water

E = the sum of the entitlements to CAP Indian Priority Water and CAP M&I Priority Water as described in subparagraphs 8.11(a) or (b), whichever is applicable; and

W = the Available CAP Supply

Example A. If, before January 1, 2044, the sum of the entitlements to CAP Indian Priority Water and CAP M&I Priority Water as described in subparagraph 8.11(a) is nine hundred eighty-one thousand nine hundred two (343,079 + 638,823 + 0) acre-feet, then the quantity of water available for delivery as CAP Indian Priority Water would be ninety-three thousand three hundred three (93,303) acre-feet plus 25.43800% of the Available CAP Supply.

Example B. If, after January 1, 2044, the sum of the entitlements to CAP Indian Priority Water and CAP M&I Priority Water as described in subparagraph 8.11(b) is one million twenty-nine thousand three hundred twenty-three (1,029,323) acre-feet (343,079 + 638,823 + 47,303 + 118), then the quantity of water available for delivery as CAP Indian Priority Water would be one hundred fifty-one thousand six hundred ninety-one (151,691) acre-feet plus 18.59354% of the Available CAP Supply.

- (d) In time of shortage unscheduled CAP Water shall be redistributed as follows:
 - (i) Any water available for delivery as CAP Indian Priority Water that is not

scheduled for delivery pursuant to contract, leases or exchange agreements for the delivery of CAP Indian Priority Water shall become available for delivery as CAP M&I Priority Water.

- (ii) CAP M&I Priority Water shall be distributed among those entities with contracts for the delivery of CAP M&I Priority Water in a manner determined by the Secretary and the CAP Operating Agency in consultation with M&I water users to fulfill all delivery requests to the greatest extent possible. Any water available for delivery as CAP M&I Priority Water that is not scheduled for delivery pursuant to contracts, leases or exchange agreements for the delivery of CAP M&I Priority Water shall become available for delivery as CAP Indian Priority Water.

(e) Any water remaining after all requests for delivery of CAP Indian Priority Water and CAP M&I Priority Water have been satisfied shall become available for delivery as CAP NIA Priority Water.

(f) Nothing in this paragraph 8.11 shall be construed to allow or authorize any CAP Contractor or CAP Subcontractor to receive, pursuant to such contracts, CAP water in amounts greater than such contractor's entitlement.

(g) Any Project water, as defined in Subarticles 5.27(b), (c) and (d) hereof, shall retain its priority relative to Project water as defined in Subarticle 5.27(a) hereof.

5. ARTICLE 12 ADDED TO THE MASTER CONTRACT: The following Article 12 is hereby added to the Master Contract:

12. EXCHANGES, LEASES, AND OTHER AGREEMENTS:

(a) No CAP water may be leased, exchanged, forborne, or otherwise transferred in any way for use directly or indirectly outside the State of Arizona; Except, such water (1) may be leased, exchanged, forborne, or otherwise transferred under an agreement with the Arizona Water Banking Authority that is in accordance with part 414 of title 43, Code of Federal Regulations, and (2) may be delivered to users in Arizona in exchange for Gila River water used in New Mexico as provided in section 304 of the Colorado River Basin Project Act (43 U.S.C. 1524) (as amended by section 212).

(b) Nothing in this subsection shall be construed to prohibit any entity from entering into a contract with the Arizona Water Banking Authority or a successor of the Authority under State of Arizona law.

(c) CAP M&I Subcontracts entered into by the United States and CAWCD with individual entities for delivery and use of CAP M&I Water may include additional prohibitions on the sale, lease, exchange, forbearance or transfer of Project water.

6. OTHER PROVISIONS UNAFFECTED: Except as expressly modified by this Amendment No. 2, all other terms and provisions of the Master Contract shall remain in full force and effect.

7. REPAYMENT STIPULATION UNAFFECTED: Nothing in this Amendment No. 2 modifies or affects the Revised Stipulation Regarding a Stay of Litigation, Resolution of Issues During the Stay, and for Ultimate Judgment Upon the Satisfaction of Conditions, filed with the United States District Court for the District of Arizona in Central Arizona Water Conservation District v. United States, et al., No. CIV 95-09625-09TUC-09WDB(EHC), No. CIV 95-091720-09PHX-09EHC (Consolidated Action), and that court's order dated April 28, 2003, and any amendments or revisions thereto.

8. EFFECTIVE DATE OF THIS AMENDMENT NO. 2:

8.1 This Amendment No. 2 shall become effective January 1, 2008; Provided, the Secretary of the Interior publishes a statement of findings in the Federal Register on or before December 31, 2007, that the provisions of section 207(c) of the Settlements Act have been met; further provided, however, that if the enforceability date deadline contained in sections 111 and 207 (c)(2) of the Settlements Act be extended by Congress, then the December 31, 2007, date specified above shall be automatically extended likewise, and the Contracting Officer shall announce a new effective date of this Amendment No. 2.

8.2 Should the Secretary fail to publish a statement of Findings in the Federal Register on or before December 31, 2007, (or as such date may be extended by Congress) that the provisions of section 207(c) of the Settlements Act have been met, this Amendment No. 2 shall be void.

9. CONTINGENT ON APPROPRIATION OR ALLOTMENT OF FUNDS: The expenditure or advance of any money or the performance of any obligation of the United States under this Amendment No. 2 shall be contingent upon appropriation or allotment of funds. Absence of appropriation or allotment of funds shall not relieve the Contractor from any obligation under this Amendment No. 2. No liability shall accrue to the United States in case funds are not appropriated or allotted.

10. OFFICIALS NOT TO BENEFIT: No Member of or Delegate to Congress, Resident Commissioner or official of the Contractor shall benefit from this Amendment No. 2 other than as a water user or landowner in the same manner as other water users or landowners.

11. CONTRACT DRAFTING CONSIDERATIONS: This Amendment No. 2 has been drafted, negotiated, and reviewed by the Parties, each of whom is sophisticated in the matters to which this Amendment No. 2 pertains, and no one Party shall be considered to have drafted this Amendment No. 2.

IN WITNESS WHEREOF, the Parties have executed this Amendment No. 2 to Contract No. 14-06-

W-245 the day and year first above written.

Approved as to Legal Sufficiency:

By: Katherine Ott Verburg
Field Solicitor

THE UNITED STATES OF AMERICA

By: Lori Gray
Regional Director
Lower Colorado Region
Bureau of Reclamation

Attest:

By: [Signature]

**CENTRAL ARIZONA WATER
CONSERVATION DISTRICT**

By: [Signature]
President