

**CENTRAL ARIZONA PROJECT WATER LEASE
BETWEEN THE AK-CHIN INDIAN
COMMUNITY AND
THE CENTRAL ARIZONA
WATER CONSERVATION
DISTRICT**

DRAFT

TABLE OF CONTENTS

<u>SECTION</u>	<u>PAGE</u>
1. PREAMBLE	1
2. RECITALS	1
3. DEFINITIONS.....	4
4. LEASE OF COMMUNITY’S CAP WATER.	7
4.1 Ak-Chin Indian Community’s CAP Delivery Contract	7
4.2 Subject of Lease	7
4.3 Term of Lease	7
4.4 Lease of Water Only	7
4.5 Consideration for Lease	8
4.6 Charge for Late Payments.....	8
4.7 No Other Charges	8
4.8 Place of Use and Use of Water	9
4.9 Procedure for Ordering Water	10
4.10 Point(s) of Delivery – Measurement and Responsibility for Distribution of Water	10
4.11 Rates of Delivery	11
4.12 Temporary Reductions	12
4.13 Protection of Water and Air Quality	13
4.14 Officials Not to Benefit	13
4.15 Books, Records, and Reports	13
4.16 The Community’s Covenants	13
4.17 CAWCD Repayment	14
5. DISPUTE RESOLUTION.....	14

6.	DEFAULT AND REMEDIES.....	14
6.1	Loss of Entitlement	14
6.2	Curing for the CAWCD’s Nonpayment	15
6.3	Termination	15
7.	GENERAL PROVISIONS	16
7.1	Satisfaction of Obligations	16
7.2	Attorneys’ Fees	16
7.3	Approval, Consent and Ratification	17
7.4	Counterparts.....	17
7.5	Notice	17
7.6	Governing Law	18
7.7	Waiver	18
7.8	Severability	18
7.9	Construction and Effect	18
7.10	Assignment Limited – Successors and Assigns Obligated	19
7.11	Third Party Beneficiaries	19
7.12	Good Faith Negotiations.....	19
7.13	Further Instrument and Acts	19
7.14	Contingent on Appropriation or Allotment of Funds.	19
7.15	Rules, Regulations, and Determinations.....	19
7.16	Equal Employment Opportunity.....	20
7.17	Contract Drafting Considerations.....	22
7.18	Title VI, Civil Rights Act of 1964	22
	SIGNATURE PAGES.....	24, 25, 26

**CENTRAL ARIZONA PROJECT WATER LEASE
BETWEEN
THE AK-CHIN INDIAN COMMUNITY
AND
CENTRAL ARIZONA WATER CONSERVATION DISTRICT**

1. **PREAMBLE**

This Water Lease Agreement (“Lease”) is entered into between the Ak-Chin Indian Community (hereinafter “Community”) and the Central Arizona Water Conservation District (“CAWCD”) (hereinafter “CAWCD”) (collectively referred to as the “Parties”). The United States of America is approving and executing this Lease in accordance with the Act of October 19, 1984 (Public Law 98-530), as amended, and the “Contract Between the United States and the Ak-Chin Indian Community To Provide Permanent Water and Settle Interim Water Rights,” dated October 2, 1985, as amended.

2. **RECITALS**

2.1 The Community is an Indian Community organized under Section 16 of the Indian Reorganization Act of June 18, 1934 (48 Stat. 984), as amended.

2.2 In 1984, the Congress of the United States enacted Public Law 98-530 (98 Stat. 2698) (hereinafter “the 1984 Act”), which authorized the conclusion of a settlement of the water rights and damages claims of the Community against the United States and others. The 1984 Act directs the Secretary, not later than January 1, 1988, to commence the delivery of not less than 75,000 acre-feet per annum of surface water to the southeast corner of the Reservation, at no cost to the Community. The 1984 Act further provides that, in years in which sufficient surface water is available and sufficient capacity exists in the main project works of the Central Arizona Project to deliver the additional water, the Secretary is to deliver to the southeast corner of the Reservation such additional quantities of surface

water as the Community may request, not to exceed 10,000 acre-feet per annum; and, in years of shortage, as defined in the 1984 Act, if 75,000 acre-feet per annum of surface water is not available for delivery to the Community, the Secretary shall deliver to the Community not less than 72,000 acre-feet of surface water per annum.

2.3 On October 2, 1985, the United States and the Community entered into an agreement entitled, “Contract Between the United States and the Ak-Chin Indian Community To Provide Permanent Water and Settle Interim Water Rights”, as amended (hereinafter “the Settlement Agreement”) for the purpose of implementing the 1984 Act.

2.4 On October 24, 1992, Public Law 102-497 (106 Stat. 3258) was enacted, which amended the 1984 Act to permit the Community, with the approval of the Secretary, to lease, to enter into options to lease, to extend leases, and to exchange or temporarily to dispose of water to which it is entitled under the 1984 Act for beneficial use within the Pinal, Phoenix and Tucson Active Management Areas, which were established by Arizona Revised Statutes § 45-411, for periods not to exceed 100 years. On October 10, 2000, Public Law 106-285 (114 Stat. 878) was enacted, which amended the leasing provisions and allows for the renewal of leases.

2.5 On December 14, 1994, the United States and the Community entered into Amendment Number 1 to the Settlement Agreement which amended the terms of the Settlement Agreement regarding “Use of Permanent Water” to read as follows:

The Community shall have the right to devote the permanent water supply provided for by this contract to any use, including agricultural, municipal, industrial, commercial, mining, recreational or other beneficial use, in the areas initially designated as the Pinal, Phoenix and Tucson Active Management Areas pursuant to the Arizona Groundwater Management Act of 1980, laws 1980, fourth special session, chapter 1. The Community is authorized to lease or enter into an option to lease, extend leases, exchange or temporarily dispose of water to which it is entitled for beneficial use in the areas initially designated as the Pinal, Phoenix and Tucson Active Management Areas pursuant to the Arizona Groundwater Management Act of 1980, laws 1980, fourth special session,

chapter 1: Provided, That the term of any such lease shall not exceed 100 years and the Community may not permanently alienate any water right. In the event the Community leases, extends leases, exchanges or temporarily disposes of water, such action shall be pursuant to a contract that has been accepted and ratified by a resolution of the Ak-Chin Indian Community Council and approved and executed by the Secretary.

2.6 CAWCD is a multi-county water conservation district organized under A.R.S. § 48-3701 et seq. Pursuant to Contract No. 14-06-W-245, Amendment 1, dated December 1, 1988, as amended, and supplemented by the Stipulated Judgment and the Stipulation for Judgment entered on November 21, 2007, in the United States District Court for the District of Arizona in the consolidated civil action styled Central Arizona Water Conservation District v. United States, et al., and numbered CIV 95-625-TUC-WDB (EHC) and CIV 95-1720-PHX-EHC, CAWCD agreed to repay the United States the reimbursable costs of the Central Arizona Project allocated to CAWCD, and was given certain authorities for the diversion and delivery of CAP Water to CAP Water users.

2.7 Pursuant to the provisions of the Contract between the United States of America and the Central Arizona Water Conservation District for the Transfer of Operation and Maintenance of Facilities dated August 5, 1987, Contract No. 7-07-30-W0167, as amended, CAWCD is the Operating Agency for the Central Arizona Project.

2.8 CAWCD has operated a Temporary Water Program with “excess water,” as that term is defined in the Repayment Stipulation. Under this program, CAWCD provided water to entities who applied for and received permits for de minimis, temporary municipal, military and agricultural uses, primarily consisting of dust suppression and livestock watering.

2.9 Pursuant to the applicable provisions of the Record of Decision: the Colorado River Interim Guidelines for Lower Basin Shortages and Coordinated Operations for Lake Powell and Lake Mead (“2007 Guidelines”) and the Lower Basin Drought Contingency Plan Agreement, the Lower Colorado River will be operated under Tier 1 Shortage Conditions for 2022, resulting in no “excess

water” available to CAWCD for its Temporary Water Program.

2.10 For calendar year 2022, the CAWCD desires to lease from the Community 500 acre-feet of the Community’s CAP water for its Temporary Water Program under the terms and conditions of this Lease.

2.11 The United States has confirmed that for the calendar year 2022, the Community will be receiving its full entitlement, up to 85,000 acre-feet of water and confirmed its water order for 89,223 acre-feet, an amount which includes an additional 6% of CAP water delivered to the Ak-Chin Reservation to account for delivery losses in the Santa Rosa Canal.

2.12 Pursuant to the 1984 Act, as amended, and the Settlement Agreement, as amended, the Community desires to lease 500 acre-feet of the Community’s CAP Water to the CAWCD during calendar year 2022 under the terms and conditions of this Lease for use only as part of the Temporary Water Program.

2.13 The Parties acknowledge that the covenants and benefits under this Lease represent good and valuable consideration, the sufficiency of which is hereby acknowledged.

NOW, THEREFORE, the Parties agree as follows:

3. **DEFINITIONS**

3.1 **“CAP” or “Project”** shall mean the Central Arizona Project, a Federal reclamation project authorized under Title 3 of the Colorado River Basin Project Act of 1968 (43 U.S.C. § 1521 *et seq.*), as amended.

3.2 **“CAP Master Repayment Contract”** shall mean the 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, dated December 1, 1988 (Contract No. 14-06-W-245, Amendment

No. 1), and any amendment or revision thereof.

3.3 **“CAP Water”** shall mean Project Water of the Central Arizona Project.

3.4 **“CAWCD”** shall mean the Central Arizona Water Conservation District, a political subdivision of the State of Arizona, which is the contractor under the CAP Master Repayment Contract.

3.5 **“Community’s CAP Delivery Contract”** shall mean the Central Arizona Project Indian Water Delivery Contract between the United States and the Ak-Chin Indian Community, dated December 11, 1980, as may be amended from time to time.

3.6 **“Community’s CAP Water”** shall mean the source of water as defined in Section 2(f)(2) of the 1984 Act, as amended, and Section 4.(a)(2) of the Settlement Agreement, as amended.

3.7 **“Effective Date”** shall mean the latest date on which this Lease is signed by the Secretary or his authorized delegate(s), after being fully executed by the authorized representatives of the Community and CAWCD.

3.8 **“Firm Federal Rate”** shall mean the rate established for Fixed OM&R and Pumping Energy which is charged for the delivery of CAP Water to the United States and Indian Tribes pursuant to the Repayment Stipulation. The Firm Federal Rate is published by the Central Arizona Water Conservation District at <https://library.cap-az.com/documents/departments/finance/Final-CAWCD-2022-2026-Water-Rate-Schedule.pdf>

3.9 **“Fixed OM&R”** or **“Fixed OM&R Costs and Charges”** shall have the meaning ascribed to it in the Repayment Stipulation.

3.10 **“Lease”** shall mean this Water Lease Agreement.

3.11 **“Lease Water”** under this Lease shall mean 500 acre-feet during 2022, of the Community’s CAP Water subject to the Community’s CAP Delivery Contract, the 1984 Act, as amended, and the Settlement Agreement, as amended.

3.12 **“Main System”** shall mean those principal works of the Project listed as follows: Granite Reef Division, Orme Division (or suitable alternative), Salt-Gila Division, Tucson Aqueduct (Colorado River Source), Buttes Dam and Navajo Project, together with all appurtenances thereto and all lands, interests in lands and right-of-way for such works and appurtenances.

3.13 **“OM&R”** shall mean the care, operation, maintenance and replacement of the Main System, or any part hereof.

3.14 **“Operating Agency”** shall mean the entity or entities authorized to assume OM&R responsibility of transferred works and approved for that purpose by the Contracting Officer. Currently, this entity is CAWCD.

3.15 **“Project Water”** shall have that meaning as defined in the Community’s CAP Delivery Contract.

3.16 **“Pumping Energy” or “Pumping Energy Costs and Charges”** shall have the meaning ascribed to it in the Repayment Stipulation.

3.17 **“Repayment Stipulation”** shall mean 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 95-625-TUC-WDB(EHC), No. CIV 95-1720-PHX-EHC (Consolidated Action), and that court’s order dated April 28, 2003, and any amendments or revisions thereto.

3.18 **“Reservation”** shall mean the Ak-Chin Indian Reservation established by Executive Order on May 28, 1912, which occupies approximately 21,840 acres of and in Pinal County, Arizona, approximately 30 miles south of Phoenix, Arizona.

3.19 **“Secretary” or “Contracting Officer”** shall mean the Secretary of the Interior or the

Secretary's lawful delegates, for purposes of the approval and execution of this Lease as required by the 1984 Act, as amended, and the Settlement Agreement, as amended.

3.20 **“Temporary Water Program”** shall mean the program administered by CAWCD providing water to individuals or entities that apply for and receive a permit for the temporary use of CAP Water for limited municipal, military and agricultural uses, including but not limited to dust suppression and livestock watering.

3.21 **“United States”** shall mean the United States of America in its capacity as trustee for the Ak-Chin Indian Community and in all other capacities necessary to effectuate the terms of this Lease.

4. **LEASE OF COMMUNITY'S CAP WATER**

4.1 **Lease Subject to Community's CAP Delivery Contract.** To the extent applicable, and except as modified or amended by the 1984 Act, as amended, and the Settlement Agreement, as amended, this Lease is subject to the provisions of the Community's CAP Delivery Contract, which is incorporated into and made a part of this Lease.

4.2 **Subject of Lease.** The Community hereby leases to CAWCD the right to up to Five Hundred (500) acre-feet of the Community's CAP Water, subject to the terms and conditions of the Community's CAP Delivery Contract, the 1984 Act, as amended, the Settlement Agreement, as amended, and this Lease, during calendar year 2022 for CAWCD's use in its Temporary Water Program.

4.3 **Term of Lease.** The term of this Lease (“Lease Term”) shall begin on the Effective Date of this Lease, and shall end midnight December 31, 2022.

4.4 **Lease of Water Only.** This Lease shall not be construed to be a sale or assignment of the Community's right or interest in the Lease Water. The allocation of the Lease Water shall be

deemed to be the property of the Community, to which the CAWCD has acquired only a leasehold interest. The CAWCD shall not assert a permanent or perpetual right to the Lease Water, except for water that has been delivered to or for the benefit of the CAWCD pursuant to this Lease. The Community reserves to itself all rights to use the Lease Water in its total discretion upon expiration or termination of this Lease.

4.5 **Consideration for Lease.**

(a) In consideration for the Lease Water which is the subject of this Lease, for all Community CAP Water delivered pursuant to this Lease, the CAWCD shall pay to the Community the sum of Two Hundred, Ninety Dollars and 00/100 (\$290.00) per acre-foot for the Lease Water (hereinafter “Water Use Charge”) for total Water Use Charges of \$145,000.00 (500 acre-feet x \$290.00).

(b) CAWCD shall pay the Water Use Charge for Lease Water to the Community in full within thirty (30) days after the Effective Date.

4.6 **Charge for Late Payments.** CAWCD shall pay a late payment charge on a payment or cure which is received after the due date. The late payment charge shall be an amount accrued from the due date at the annual rate of one percent (1%) over the Prime Rate in effect on the due date, but in no event shall the late payment charge be less than eight percent (8%). For purposes of this Lease, the term “Prime Rate” shall mean the per annum interest rate designated by Wells Fargo Bank, or its successor, as its “prime rate,” “base rate,” or “reference rate” for commercial loans as publicly announced from time to time. The late payment charge applied on an overdue payment shall remain in effect until payment is received. In the case of partial late payments, the amount received shall first be applied to the late charge on the overdue payment and then to the overdue payment.

4.7 **No Other Charges**

(a) The \$145,000.00 to be paid to the Community shall constitute the full and

complete consideration to be provided to the Community for CAWCD's lease of the Leased Water. CAWCD shall not be obligated to pay CAP water service capital charges, Fixed OM&R Costs and Charges, Pumping Energy Costs and Charges, or any other Charges for providing Project Water service for any Indian Tribe or for any other Federal purpose (collectively "Charges") for the delivery of Community CAP Water pursuant to this Lease, and the charges set forth and required to be paid by Subsection 4.5(a) are the only charges which either the United States or the Community may impose upon the CAWCD with respect to the delivery of Community CAP Water pursuant to this Lease.

(b) In the event the United States fails or refuses to appropriate funds to pay the Charges which are associated with delivery of the Community's CAP Water, the CAWCD must pay such Charges to the United States in order to assure the continuing delivery of Community CAP Water pursuant to this Lease. In no event will the Community pay or assume any Charges or reimburse any payments made by CAWCD under this Lease.

(c) Nothing in this Subsection 4.7 shall be construed as affecting the Community's right to bring suit against the United States for breach of the 1984 Act, as amended, the Community's CAP Delivery Contract, or the Settlement Agreement, as amended, or of this Lease, nor shall anything in this Lease be construed as a limitation on the CAWCD's right to bring suit against the United States for review of any action by the Secretary hereunder or for damages the CAWCD may incur as a result of the United States' failure to appropriate funds to pay the Charges associated with delivery of the Community's CAP Water.

4.8 **Place of Use and Use of Water.**

(a) The CAWCD shall have the right to use, within the Pinal, Phoenix, and Tucson Active Management Areas, the Lease Water made available pursuant to this Lease only for its Temporary Water Program.

(b) The CAWCD agrees not to assign, sublease, exchange, transfer or otherwise dispose of any of the CAWCD's right to the delivery of Lease Water under this Lease in violation of this Lease or in a manner which would impair the Community's rights hereunder, except that the CAWCD may, with approval hereby granted from the Community and the United States, exchange not more than 12 acre-feet of Lease Water with 12 acre-feet of water from the Subcontract between the United States and the Central Arizona Water Conservation District, NIA Subcontract No. 21-XX-30-W0703, as long as such exchange furthers the goals of the Temporary Water Program and maintains a total delivery, to the Temporary Water Program, not to exceed the full 500-acre feet of Lease Water under this Lease.

4.9 **Procedure for Ordering Water.**

(a) The Community shall revise its 2022 CAP Water order, previously delivered to the Secretary, as soon as practicable following the Effective Date of this Lease to reduce the amount of water ordered by the Community for calendar year 2022 by five hundred (500) acre-feet to accommodate the delivery of the Lease Water to the CAWCD for its Temporary Water Program pursuant to the provisions of this Lease.

(b) CAWCD shall schedule the five-hundred (500) acre-feet of Lease Water for delivery pursuant to the Temporary Water Program, for such uses in the Pinal, Phoenix, and Tucson Active Management Areas, or for an exchange pursuant to paragraph 4.8 (b).

4.10 **Point(s) of Delivery - Measurement and Responsibility for Distribution of Water.**

(a) The Lease Water to be furnished to the CAWCD pursuant to this Lease shall be delivered by the United States to such point or points of delivery along the Main System of the Central Arizona Project as the CAWCD designates in its water delivery schedules for delivery to its Temporary Water Program pursuant to Section 4.8. of this Lease.

(b) Unless the United States and the CAWCD agree by contract to the contrary, the CAWCD shall be solely responsible for the construction or installation of any new connection facilities required to take and convey the Lease Water from the turnouts on the Main System.

(c) All Lease Water delivered to the CAWCD pursuant to this Lease shall be measured with equipment furnished and installed by the United States, and operated and maintained by the United States or the CAWCD in its capacity as Operating Agency. Upon the request of the Community, or the CAWCD, the accuracy of such measurements will be investigated by the United States or the Operating Agency, or the Community, and any errors appearing therein adjusted.

(d) Neither the United States, the Community, nor the Operating Agency shall be responsible for the control, carriage, handling, use, disposal, or distribution of Lease Water beyond the delivery point(s) agreed to pursuant to this Subsection 4.10. The CAWCD shall hold the United States and the Community harmless on account of damage or claim of damage of any nature whatsoever for which there is legal responsibility, including property damage, personal injury, or death arising out of or connected with the CAWCD's control, carriage, handling use, disposal, or distribution of such water beyond said delivery point(s).

4.11 **Rates of Delivery.**

(a) Lease Water made available to the CAWCD pursuant to this Lease shall be delivered to the delivery points and at such rates of delivery as the CAWCD may specify and the CAWCD may allocate delivery rates among delivery points.

(b) Provided, however, that the Community and the CAWCD agree to consult with the Contracting Officer if deliveries to the CAWCD's specified delivery points would cause operational issues that would not arise if such deliveries would have been made to the southeast corner of the Reservation.

4.12 **Temporary Reductions.** In addition to the right of the United States under Subsection 4.3(a)(4) of the Community's CAP Delivery Contract temporarily to discontinue or reduce the amount of water to be delivered, the United States or the Operating Agency may temporarily discontinue or reduce the quantity of water to be furnished to the CAWCD as herein provided for the purpose of investigation, inspection, maintenance, repair or replacement of any of the Project facilities or any part thereof necessary for the furnishing of water to the CAWCD; but so far as feasible the United States or the Operating Agency shall coordinate any such discontinuance or reduction with the Community and the CAWCD, except in case of emergency.

4.13 **Protection of Water and Air Quality**

(a) Project facilities used to make available and deliver water to the CAWCD shall be operated and maintained in the most practical manner to maintain the quality of the water at the highest level possible as determined by the Contracting Officer: Provided, that for the limited purposes of this Lease, the United States does not warrant the quality of the water delivered to the CAWCD for its Temporary Water Program and is under no obligation to furnish or construct water treatment facilities to maintain or improve the quality of water delivered to the CAWCD.

(b) The CAWCD shall comply with all applicable water and air pollution laws and regulations of the United States; and shall obtain all required permits or licenses from the appropriate Federal, Tribal, and State authorities necessary for the delivery of the Lease Water to the CAWCD; and shall be responsible for compliance with all water quality standards applicable to surface and subsurface drainage and/or discharges generated through the use of Federal or CAWCD facilities or Project water provided by the CAWCD within the CAWCD's Project Water Service Area facilities.

(c) To the extent applicable, this article shall not affect or alter any legal obligations of the Secretary to provide drainage or other discharge services.

4.14 **Officials Not to Benefit.** No Member of or Delegate to the Congress, Resident Commissioner, or official of the Community or CAWCD shall benefit from this Lease other than as a water user or landowner in the same manner as other water users or landowners.

4.15 **Books, Records and Reports.** The CAWCD shall establish and maintain accounts and other books and records pertaining to administration of the terms and conditions of this Lease, including the CAWCD's financial transactions; water supply data; project operation, maintenance, and replacement logs; project land and rights-of-way use agreements; water-use data; and other matters that the Contracting Officer may require. Reports shall be furnished to the Contracting Officer in such form and on such date or dates as the Contracting Officer may require. Subject to applicable tribal and Federal laws and regulations, each Party to this Lease shall have the right during office hours to examine and make copies of the other party's books and records relating to matters covered by this Lease.

4.16 **The Community's Covenants.** The Community agrees:

(a) To observe and perform all obligations imposed on the Community under the Community's CAP Delivery Contract which are not assumed by the CAWCD so that the CAWCD's rights are not in any way impaired;

(b) Not to execute any other lease or obligate by contract any of the Community's right to the delivery of the Community's CAP Water under the Community's CAP Delivery Contract in a manner that would impair the CAWCD's rights under this Lease;

(c) Not to alter or modify the terms of the Community's CAP Delivery Contract, except as provided herein, in such a way as to impair the CAWCD's rights to receive delivery of Lease Water under the terms of this Lease, or to exercise any option required or permitted by the Community's CAP Delivery Contract so as to interfere with or change the CAWCD's rights to receive delivery of Lease Water under this Lease;

(d) Not to terminate or cancel the Community's CAP Delivery Contract, or transfer, convey or permit a transfer or conveyance of the Community's CAP Delivery Contract so as to cause a termination of, or interference with, its rights and obligations under the Community's CAP Delivery Contract; and

(e) To deliver to the CAWCD a copy of any amendment or renewal to the Community's CAP Delivery Contract within thirty (30) days of the date of the amendment or renewal.

4.17 **CAWCD Repayment.** For the purpose of determining allocation and repayment of costs of the CAP as provided in Section 9.3 of the CAP Master Repayment Contract, the costs associated with the delivery of water pursuant to this Lease shall be non-reimbursable, and such costs shall be excluded from CAWCD's repayment obligation.

5. **DISPUTE RESOLUTION.** The Community and the CAWCD shall attempt to resolve any disputes arising under this Lease, including a default or breach of the Lease, by negotiation between each other. To the extent that such negotiations between the Community and the CAWCD do not result in the resolution of the dispute or the curing of the default or breach, then, as to each other, the Community and the CAWCD agree that binding arbitration shall be the sole remedy as to all disputes between the Community and the CAWCD arising out of this Lease. Provided, however, that no waiver of sovereign immunity or agreement to binding arbitration is made by the United States under this Lease, and no waiver of sovereign immunity is made by the Community as to the United States except as otherwise provided by applicable law.

6. **DEFAULT AND REMEDIES.**

6.1 **Loss of Entitlement.** The CAWCD shall have no right to delivery of Lease Water from Project facilities unless and until all payment to the Community has been paid in full. Failure to pay the lease payment shall constitute a default under this Lease, subject to the right to cure as set forth in

Subsection 6.2 of this Lease. Failure to cure such default within the periods set forth in this Lease may constitute a material breach which may subject the CAWCD to all remedies available to the Community, including termination of this Lease.

6.2 **Curing for the CAWCD's Nonpayment.** If the payment of Water Use Charges under Subsection 4.5(a) of this Lease is not made on or before the date such payment is due, or any other payment is not made on or before the date such payment is due, the CAWCD shall be in default and the Community shall give written notice of default to the CAWCD. The notice of default shall specifically describe the default and state the amount due by the CAWCD ("Default Amount"). After notice of default, the rights of the CAWCD and the Community shall be as follows:

(a) For thirty (30) days following the notice of default, the CAWCD shall have the right to cure any such default by tendering the Default Amount. A cure effected pursuant to this Subsection 6.2(a) shall constitute full performance of such payment obligation;

(b) A failure by the CAWCD to cure as provided for in Subsection 6.2(a) hereof, after notice of default, shall constitute a material breach under this Lease and shall constitute grounds for termination of this Lease. The Community shall give the CAWCD at least ten (10) days written notice prior to termination of this Lease for material breach;

(c) Notwithstanding the foregoing provisions of this Section 6, upon effective termination of this Lease by the Community, the Community shall have no obligation to contract with a third party or parties for a lease or leases, transfer or transfers, or other disposition of the Lease Water which is the subject of this Lease for valuable consideration and shall be entitled to the delivery of the Lease Water for its own use.

6.3 **Termination.** In addition to any other remedy provided herein or as otherwise provided at law or in equity, either the CAWCD or the Community may terminate this Lease for material breach

upon written notice of default of a material provision and failure to cure the default within the periods provided herein; Provided, however, if no period is specified, the time for curing such default shall be as soon as reasonably possible, but not longer than thirty (30) days.

7. **GENERAL PROVISIONS**

7.1 **Satisfaction of Obligations.**

(a) Any delivery of Lease Water by the Secretary to the CAWCD pursuant to this Lease shall, to the extent of that delivery, satisfy the Secretary's delivery obligation to the Community under the Settlement Agreement.

(b) All Lease Water leased to the CAWCD pursuant to this Lease shall be considered to have been devoted to the exclusive use and benefit of the Community pursuant to the 1984 Act, as amended, and the Settlement Agreement, as amended, notwithstanding the CAWCD's physical use of such Lease Water in accordance with the terms of this Lease.

(c) The Lease Water leased and delivered to the CAWCD pursuant to this Lease shall be considered to have been used by the Community for purposes of the Community's rights under the Settlement Agreement, as amended.

(d) The Community shall be entitled to schedule for delivery and to use any of the Lease Water which CAWCD does not schedule for delivery to the Temporary Water Program by November 15, 2022; Provided, however, that in the event of any conflict between a schedule submitted by the CAWCD and a schedule submitted by the Community for the use of Lease Water, the schedule submitted by the CAWCD shall take precedence.

7.2 **Attorneys' Fees.** The prevailing party in any lawsuit, appeal or other proceeding brought to enforce or to otherwise implement the terms and conditions of this Lease shall be entitled to an award of reasonable attorneys' fees and costs; Provided, however, this provision shall not apply to

the United States.

7.3 **Approval, Consent, and Ratification.** The Community, the CAWCD, and the Secretary, by execution of this Lease, approve, endorse, consent to and ratify this Lease.

7.4 **Counterparts.** This Lease may be executed in multiple counterparts, each of which shall be considered an original and all of which, taken together, shall constitute one agreement.

7.5 **Notice.** Any notice, demand, or request authorized or required to be given or payment made under this Lease shall be deemed properly given or made when received by the individual(s) designated below, or five (5) days following deposit in the United States mail, postage prepaid, addressed as follows:

(a) As to the United States:

The Secretary of the Interior
Department of the Interior
1849 C Street, N.W., mailstop 4100-MIB
Washington, DC 20240

Regional Director
Western Regional Office
Bureau of Indian Affairs
2600 N. Central Avenue, 4th Floor
Phoenix, AZ 85004

Regional Director
Bureau of Reclamation
Interior Region 8: Lower Colorado Basin
P.O. Box 61470
Boulder City, NV 89006-1470

Superintendent, Pima Agency
Bureau of Indian Affairs
104 N. Main Street
Sacaton, Arizona 85247

(b) As to the Ak-Chin Indian Community:

Ak-Chin Indian Community Council
Attention: Chairman

42507 West Peters & Nall Road
Maricopa, AZ 85239

Strickland & Strickland, P.C.
4400 E. Broadway, Suite 700
Tucson, Arizona 85711-3517

- (c) As to Central Arizona Water Conservation District:
Central Arizona Water Conservation District
Attn: General Manager
P.O. Box 43020
Phoenix, AZ 85080-3020

The designation of the addressee or the address may be changed by notice given in the same manner as provided in this Subsection 7.5 for other notices.

7.6 **Governing Law.** This Lease shall be governed in accordance with applicable Federal law. To the extent that Federal law provides no controlling precedent, the court shall apply Arizona law as its choice of law.

7.7 **Waiver.** No waiver of any breach of any of the terms or conditions of this Lease shall be construed as a waiver of any subsequent breach of the same or other terms or conditions of this Lease.

7.8 **Severability.** If any term or provision of this Lease is held to be unenforceable or invalid by a court of competent jurisdiction, that term or provision shall be severable from the remainder of this Lease and shall not affect or render invalid any other term or provision of this Lease.

7.9 **Construction and Effect.**

(a) This Lease and each of its provisions are to be construed fairly and reasonably and not strictly for or against any party hereto.

(b) The Section titles used in this Lease are for convenience only and shall not be considered in the construction of this Lease.

(c) Nothing in this Lease shall be construed or interpreted as an alteration or amendment to

the 1984 Act, as amended, and the Settlement Agreement, as amended, or to the contracts entered into pursuant to the 1984 Act, as amended, and the Settlement Agreement, as amended.

7.10 **Assignment Limited - Successors and Assigns Obligated.** The provisions of this Lease shall apply to and bind the successors and assigns of the parties hereto, but no assignment or transfer of this Lease or any right or any interest therein by any party shall be valid until approved in writing by the Parties, and approved by the Secretary.

7.11 **Third Party Beneficiaries.** There shall be no third party beneficiaries of this Lease.

7.12 **Good Faith Negotiations.** This Lease has been negotiated in good faith and the Parties agree that no information exchanged or offered, or compromises made, in the course of negotiating this Lease may be used as either evidence or argument by any party to this Lease in any legal or administrative proceeding other than a proceeding for the interpretation or enforcement of this Lease.

7.13 **Further Instrument and Acts.** Either Party will, whenever and as often as it shall be requested to do so by the other, perform such acts and cause to be executed, acknowledged or delivered any and all such further instruments and documents as may be necessary or proper, in the reasonable opinion of the requesting party, in order to carry out the intent and purpose of this Lease.

7.14 **Contingent on Appropriation or Allotment of Funds.** The expenditure of advance of any money or the performance of any obligation of the United States under this Lease shall be contingent upon appropriation, or allotment of funds. Absence of appropriation or allotment of funds shall not relieve the Community or CAWCD from any obligations under this Lease. No liability under this Lease shall accrue to the United States in case funds are not appropriated or allotted.

7.15 **Rules, Regulations, and Determinations.**

(a) The parties agree that the delivery of water or the use of Federal facilities pursuant to the Lease is subject to Federal reclamation law, as amended and supplemented, and the rules and

regulations promulgated by the Secretary under Federal reclamation law.

(b) The Contracting Officer shall have the right to make determinations necessary to administer this Lease that are consistent with its provisions, the laws of the United States, and the rules and regulations promulgated by the Secretary. Such determinations shall be made in consultation with the Community and the CAWCD.

7.16 **Equal Employment Opportunity.**

During the performance of this contract, CAWCD agrees as follows:

(a) CAWCD will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. CAWCD will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. CAWCD agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Contracting Officer setting forth the provisions of this nondiscrimination clause.

(b) CAWCD will, in all solicitations or advancements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

(c) CAWCD will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation

information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.

(d) CAWCD will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency Contracting Officer, advising the labor union or workers' representative of the CAWCD's commitments under section 202 of Executive Order No. 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(e) CAWCD will comply with all provisions of Executive Order No. 11246 of Sept. 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(f) CAWCD will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by CAWCD and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(g) In the event of CAWCD's noncompliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be canceled, terminated or suspended in whole or in part and CAWCD may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order No. 11246 of Sept. 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided

by law.

(h) The CAWCD will include the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by the rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. CAWCD will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions, including sanctions for noncompliance: *Provided, however*, that in the event CAWCD becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, CAWCD may request the United States to enter into such litigation to protect the interests of the United States.

7.17 **Contract Drafting Considerations.** The Lease has been, negotiated and reviewed by the Parties hereto, and no one party shall be considered to have drafted the Lease.

7.18 **Title VI, Civil Rights Act of 1964.**

COMPLIANCE WITH CIVIL RIGHTS LAWS AND REGULATIONS

(a) CAWCD shall comply with Title VI of the Civil Rights Act of 1964 (Pub. L. 88-352; 42 U.S.C. § 2000d), the Rehabilitation Act of 1973 (Pub. L. 93-112, Title V, as amended; 29 U.S.C. § 791, et seq.), the Age Discrimination Act of 1975 (Pub. L. 94-135, Title III; 42 U.S.C. § 6101, et seq.), Title II of the Americans with Disabilities Act of 1990 (Pub. L. 101-336; 42 U.S.C. § 12131, et seq.), and any other applicable civil rights laws, and with the applicable implementing regulations and any guidelines imposed by the U.S. Department of the Interior and/or Bureau of Reclamation.

(b) These statutes prohibit any person in the United States from being excluded from participation in, being denied the benefits of, or being otherwise subjected to discrimination under any

program or activity receiving financial assistance from the Bureau of Reclamation on the grounds of race, color, national origin, disability, or age. By executing this contract, CAWCD agrees to immediately take any measures necessary to implement this obligation, including permitting officials of the United States to inspect premises, programs, and documents.

(c) CAWCD makes this agreement in consideration of and for the purpose of obtaining any and all Federal grants, loans, contracts, property discounts, or other Federal financial assistance extended after the date hereof to the CAWCD by the Bureau of Reclamation, including installment payments after such date on account of arrangements for Federal financial assistance which were approved before such date. CAWCD recognizes and agrees that such Federal assistance will be extended in reliance on the representations and agreements made in this article and that the United States reserves the right to seek judicial enforcement thereof.

(d) Complaints of discrimination against the CAWCD shall be investigated by the Contracting Officer's Office of Civil Rights.

(Signatures follow)

IN WITNESS WHEREOF, the Parties have executed this Lease on the dates shown below.

AK-CHIN INDIAN COMMUNITY

By: _____

Its: _____

Date: _____

ATTEST:

Tribal Secretary

DRAFT

CENTRAL ARIZONA WATER
CONSERVATION DISTRICT

By: _____

Its: _____

Date: _____

DRAFT

Pursuant to the 1984 Act, as amended, and the Settlement Agreement, as amended, the foregoing Water Lease Agreement for lease water between the Community and the CAWCD is hereby approved and executed.

THE UNITED STATES OF AMERICA

BUREAU OF INDIAN AFFAIRS

By _____

Its: _____

Date: _____

BUREAU OF RECLAMATION

By _____

Its: _____

Date: _____

DRAFT