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GROUNDWATER SAVINGS FACILITY AGREEMENT

BETWEEN

SALT RIVER VALLEY WATER USERS' ASSOCIATION

AND

TOWN OF GILBERT

06/18/1996 TJK

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1 GROUNDWATER SAVINGS FACILITY AGREEMENT

2 1. PARTIES:

3 This Groundwater Savings Facility Agreement ("Agreement") is made and entered into the
4 *24th* day of *July* ²⁰⁰¹ ~~19~~ by and between the SALT RIVER VALLEY WATER
5 USERS' ASSOCIATION, an Arizona Corporation, (hereinafter referred to as "Association")
6 and the TOWN OF GILBERT an Arizona Municipal Corporation, (hereinafter referred to as
7 "Town"). These parties may hereinafter be referred to individually as "Party" and collectively
8 as "Parties".

9 2. RECITALS:

10 2.1 Shareholders of Association are owners of land ("Member Land") within the Salt River
11 Reservoir District ("SRRD"), having valid appropriative rights to water of the Salt and
12 Verde Rivers. Association is responsible for delivery to Member Land of water
13 developed, controlled or stored by it for the benefit of such lands, including
14 groundwater pumped from Association wells to supplement surface water.

15 2.2 Town distributes water to land within its water service area. As Member Lands
16 urbanize, Association delivers to Town for said lands within Town's water service
17 area, water developed, controlled or stored by Association, to which said lands are
18 entitled, including groundwater.

19 2.3 Arizona revised statutes §45-801.01 et seq encourage the use of Central Arizona
20 Project ("CAP") water in place of groundwater by authorizing permits to be issued for
21 water storage and the operation of groundwater savings facilities ("GSF") in active
22 management areas ("AMAs").

23 2.4 The SRRD is within the Phoenix AMA. Association desires to reduce the amount of
24 groundwater pumped from within the SRRD and delivered for use on Member Land
25 by operating the SRRD as a GSF pursuant to a GSF permit.

26 2.5 Town also desires to reduce groundwater pumping within the Phoenix AMA, and is

1 willing to arrange for the delivery of CAP water to the SRRD GSF. Association is
2 willing to receive and then deliver such water in-lieu of groundwater for use on
3 Member Land.

4 2.6 Association and Town desire to enter into this Agreement to establish a GSF and
5 acquire CAP water for delivery and use within the GSF in-lieu of groundwater
6 pumped therein.

7 3. AGREEMENT:

8 In consideration of the foregoing, the covenants and agreements contained herein and other
9 good and valuable consideration, Association and Town agree as follows:

10 4. AUTHORIZED REPRESENTATIVES:

11 Within thirty (30) days after execution of this Agreement, each Party shall designate in
12 writing to the other Party, an authorized representative ("AR") and an alternate to administer
13 on behalf of the designating Party, the provisions of this Agreement as stipulated in Sections
14 6.2, 6.3 and 6.5. Written notice of a change of an AR or alternate shall be provided within
15 thirty (30) days of such change. The alternate shall act only in the absence of the AR.
16 Neither the ARs nor the alternates shall have authority to amend this Agreement.
17 Agreements of the ARs pursuant to this Agreement shall be in writing and signed by them.

18 5. PERMITS AND REPORTS:

19 5.1 At its expense, Association shall obtain and maintain in effect a GSF permit issued by
20 the Arizona Department of Water Resources ("ADWR") to operate the SRRD as a
21 GSF pursuant to and in accordance with the permit.

22 5.2 At its expense, Town shall obtain and maintain in effect a water storage permit issued
23 by the ADWR for the GSF specified in Section 5.1.

24 5.3 The Party issued a permit by ADWR pursuant to this Section 5 shall be responsible
25 for the filing of reports required by the permit.

26 5.4 Each Party shall cooperate with and provide non-proprietary information required by

1 the other Party to obtain, or conform to the requirements of, a permit specified in this
2 Section 5. Association and Town agree to comply with the operating requirements of
3 the GSF permit and the GSF plan of operation.

4 5.5 Town acknowledges that ADWR may determine that certain water losses incurred
5 transporting CAP water as in-lieu water ("In Lieu-Water") for use on Member Land,
6 shall reduce the amount of water credits accrued by Town from operation of the GSF.

7 6. CAP WATER CONTRACT:

8 6.1 Town shall use its existing contract or enter into a contract ("Contract") with Central
9 Arizona Water Conservation District ("CAWCD") to provide for the delivery of In-Lieu
10 Water for use in the GSF during the term of the GSF permit.

11 6.2 The Contract shall permit Association to order In-Lieu Water directly from CAWCD in
12 accordance with CAWCD water ordering procedures, and limits to be established by
13 the ARs. In-Lieu Water ordered by Association shall not exceed the then applicable
14 Town budget for such water.

15 6.3 By September 30 of each year, for the following calendar year, the ARs shall agree
16 upon an estimate of the amount of Association groundwater pumping that can be
17 displaced within the GSF on an acre-foot for acre-foot basis by the receipt of In-Lieu
18 Water for use in the GSF. Town may contract with CAWCD for such estimated
19 amount of In Lieu Water, subject to potential reduction as herein provided. During
20 the year for which the estimate was prepared, Association may, without any liability to
21 Town whatsoever, reduce this estimate due to a substantial increase in the quantity
22 of surface water in storage, which event has resulted in a change in the project
23 reservoir operating plan ("PROP") customarily used by Association to determine both
24 groundwater pumping and use of surface water within the SRRD. By written notice,
25 the Association AR shall inform the Town AR of the required reduction of the
26 estimate as soon as practicable. Town shall then reduce its contracted amount of In-

1 Lieu Water by a like amount.

2 6.4 In-Lieu Water shall be delivered through the CAP/SRP Interconnection Facility
3 ("CSIF") to the Association canal system using Town's capacity, as necessary, in
4 each of the components of the CSIF. If the rate of delivery of In-Lieu Water exceeds
5 such capacity owned by Town, Association's capacity in the CSIF components shall
6 be used to the extent of such exceedance. Each Party shall bear the cost of use of
7 its owned capacity in each CSIF component used for the delivery of In-Lieu Water.
8 The water shall be measured as provided in the CAP/SRP Interconnection
9 Intergovernmental Agreement dated July 26, 1989, to which the Parties hereto are
10 also parties.

11 6.5 Except as otherwise provided in this Agreement, Association shall have no obligation
12 to conform to the requirements of the Contract, except Association shall pay to Town
13 one-half of the cost of In-Lieu Water Association orders and receives. Association's
14 share of such cost shall not exceed fifteen dollars (\$15) per acre foot, unless
15 otherwise agreed by the ARs. Association's share of the cost shall be remitted to
16 Town by the end of the month following the month during which the In-Lieu Water
17 was received.

18 6.6 Association shall be responsible for the In-Lieu Water and its delivery for use on
19 Member Land in the GSF once the water has been introduced to the Association
20 canal system. Town shall neither be charged a transportation fee nor be assessed
21 transportation losses pursuant to the Water Transportation Agreement between the
22 Parties dated November 25, 1997 for In-Lieu Water delivered to Association
23 pursuant to this Agreement. In-Lieu Water delivered to Member Land shall be
24 accounted for as part of that land's allotment of water from Association.

25 6.7 By the fifteenth (15th) day of each month, Association shall provide Town a report
26 that specifies the total amount of In-Lieu Water received by Association pursuant to

1 this Agreement during A) the prior calendar month, and B) the calendar year to date,
2 inclusive of the prior calendar month.

3 6.8 For each acre foot of In-Lieu Water received pursuant to this Agreement, Association
4 shall reduce its groundwater pumping within the GSF by one acre-foot in comparison
5 to the amount of groundwater Association would have pumped within the GSF had it
6 not received the In-Lieu Water.

7 7. TERM AND TERMINATION:

8 7.1 This Agreement shall become effective upon A) execution by the Parties, B) receipt
9 of the required permits, and C) execution of the Contract stipulated in Section 5.

10 7.2 Once effective, this Agreement shall remain in effect from year to year on a calendar
11 year basis, unless terminated as hereinafter provided.

12 7.3 Either Party may terminate this Agreement effective at the end of the then current
13 calendar year, upon written notice provided to the other Party at least thirty (30) days
14 prior to the end of the then current term of this Agreement.

15 7.4 Termination of this Agreement shall not relieve either Party of its obligation to make
16 payments due pursuant to this Agreement.

17 8. RECOVERY OF WATER:

18 The Parties acknowledge that the recovery of water retained underground in the GSF,
19 pursuant to this Agreement and applicable permits, is beyond the scope of this Agreement,
20 and recovery of such water shall be the sole responsibility of the Party desiring to recover
21 such water.

22 9. WATER QUALITY:

23 Neither Party guarantees the quality of In-Lieu Water delivered, received or used pursuant to
24 this Agreement. Each Party waives its right to make a claim against the other Party for the
25 effect on the quality of surface or underground water as a result of this Agreement, unless
26 such effect on water quality is the result of such other Party's negligent or wrongful action or

1 inaction.

2 10. INDEMNIFICATION:

3 Each Party (indemnitor) to this Agreement shall indemnify and hold harmless the other Party
4 (indemnitee) and its governing bodies, agents, directors, officers, and employees from any
5 loss, damage, or liability, including reasonable attorney's fees, caused by a negligent or
6 wrongful action or inaction on the part of the indemnitor and its governing bodies, agents,
7 directors, officers, and employees, including without limitation, claims for bodily injury,
8 illness, death, or damage to property. Each Party shall assume liability for its own negligent
9 or wrongful action or inaction.

10 11. UNCONTROLLABLE FORCES:

11 Neither Party shall be considered to be in default in the performance of any of its obligations
12 hereunder (other than obligations of the Parties to make payments due hereunder) when a
13 failure of performance shall be due to uncontrollable forces. The term "uncontrollable
14 forces" shall mean any cause beyond the control of the Party unable to perform such
15 obligation, including, but not limited to, failure of or threat of failure of facilities, flood,
16 earthquake, storm, fire, lightening and other natural catastrophes, epidemic, war, riot, civil
17 disturbance or disobedience, strike, labor dispute, labor or material shortage, sabotage,
18 government priorities and restraint by court order or public authority, and action or nonaction
19 by, or failure to obtain the necessary authorizations or approvals from, any governmental
20 agency or authority, which by exercise of due diligence such Party could not reasonably
21 have been expected to avoid and which by exercise of due diligence it shall be unable to
22 overcome. Nothing contained herein shall be construed to require either Party to settle any
23 strike or labor dispute in which it is involved.

24 12. NOTICES:

25 Any notice, demand or request provided for in this Agreement shall be in writing and
26 delivered in person, or sent by registered or certified mail, postage prepaid, to:

1 Salt River Valley Water Users' Association

2 c/o Corporate Secretary - PAB 215
3 PO Box 52025
4 Phoenix, AZ 85072-2025
5 Reference: Groundwater Savings Agreement

6 (With a copy to Association's Authorized Representative.)

7 Tinnie Ernst
8 Public Works Director, Town of Gilbert
9 1025 S. Gilbert Rd.
10 Gilbert, AZ 85234-3401

11 (With a copy to Town's Authorized Representative.)

12 13. WAIVER:

13 The waiver by either Party of any breach of any term, covenant or condition herein shall not
14 be deemed a waiver of any other term, covenant or condition, or any subsequent breach of
15 the same or any other term, covenant or condition herein.

16 14. TRANSFER OF INTEREST:

17 No voluntary transfer of this Agreement or the rights or obligations of either Party under this
18 Agreement shall be made without the written consent and approval of the other Party, except
19 to a successor in operation of the properties of either Party; however, water credits accrued
20 from operation of the GSF may be assigned at the sole discretion of the accruing Party.

21 15. NO THIRD PARTY BENEFICIARIES:

22 This Agreement is solely for the benefit of the Parties, and does not create nor shall it be
23 construed to create rights in any third party. No third party may enforce the terms and
24 conditions of this Agreement.

25 16. GOVERNING LAW:

26 This Agreement is made under, and shall be governed by, the laws of the State of Arizona.

17. AGREEMENT CANCELLATION:

1 This Agreement may be cancelled pursuant to Arizona revised statute § 38-511.

2 18. HEADINGS:

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

5 19. ENTIRE AGREEMENT:

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

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IN WITNESS WHEREOF, this Agreement was executed by the Parties on the date first hereinabove written.

Attest and Countersign

SALT RIVER VALLEY WATER USERS' ASSOCIATION

Stephanie K Reed ASST. CORP. SEC. Secretary

By *William P. Schneider* President

APPROVED AS TO FORM AND WITHIN THE POWER AND AUTHORITY GRANTED UNDER THE LAWS OF THE STATE OF ARIZONA TO THE SALT RIVER VALLEY WATER USERS' ASSOCIATION

[Signature] 8/27/01

Attest

TOWN OF GILBERT, a municipal corporation

Catherine A. Tompkins Town Clerk

Paul Cooper Town Manager

APPROVED AS TO FORM AND WITHIN THE POWER AND AUTHORITY GRANTED UNDER THE LAWS OF THE STATE OF ARIZONA TO THE TOWN

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John J. Goss
Town Attorney