Payson

Water Department

303 N. Beeline Highway
Payson, AZ 85541
Phone (928) 474-5242
Fax (928) 474-7052

Memo from Buzz Walker, Water Superintendent

Date: April 30, 2008
To: Mayor and Town Council members
Re: CC Cragin Agreement

Enclosed please find the latest revision of an agreement between the Salt River Project and the Town of Payson for use of CC Cragin Reservoir water in Payson. The agreement encompasses many revisions during the past one-year period as a result numerous Town of Payson and Salt River Project negotiation team meetings, technical staff meetings, phone calls and written correspondence.

While this version is not complete in terms of exhibits, some of which cannot be added until instigation and completion of the water rights transfer state process, it is essentially complete for purposes of approval of the elements of the overall agreement. We will have the most recent version before the May 6, 2008, Town Council meeting. We do not foresee any major deviations from this version.

Additionally, I have enclosed a simple fact sheet intended to highlight the major elements of the agreement.

SALT RIVER PROJECT AND TOWN OF PAYSON AGREEMENT FOR USE OF C. C. CRAGIN RESERVOIR INFORMATION

(Buzz Walker, 4-30-08)

The Town of Payson and the Salt River Project acknowledge conflict over the availability and use of water resources in the local Payson area. In order to eliminate these conflicts and the likelihood of disagreement and conflict between the two entities over future Payson water development actions it is desirable to enter into an agreement that gives certainty to Payson's current and future water supplies.

1. The federal Arizona Water Settlements Act of 2004 created an opportunity for Payson to utilize surface water from C. C. Cragin Reservoir (Reservoir). The legislation did not guarantee that Payson and other local communities could obtain water from the reservoir and it did not compel the Salt River Project to share the use of the reservoir with other water users. The legislation allowed that water may be made available for use in Northern Gila County at no cost to the Salt River Project. The act did not create a water right for the Town of Payson (Payson). The Salt River Project holds the only water right for water stored in and diverted from Reservoir. Any use of water from the reservoir by entities other that the Salt River Project can be accomplished only by the consent of the Salt River Project (SRP).

2. The means by which Payson can utilize water from the Reservoir is that Payson must enter into an agreement with SRP to share liabilities and expenses incurred in the operation of the Reservoir and its water pumping facilities for the benefit of Payson. The terms of this partnership are outlined in an agreement titled WATER RIGHTS TRANSFER, AND WATER DELIVERY AND USE AGREEMENT BETWEEN SALT RIVER VALLEY WATER USERS' ASSOCIATION, SALT RIVER PROJECT AGRICULTURAL IMPROVEMENT AND POWER DISTRICT AND TOWN OF PAYSON (Agreement).

3. The Agreement creates a partnership between SRP and Payson. The Agreement outlines how liabilities and expenses are shared.

4. When the Agreement is approved by both partners, SRP will take the legal steps necessary to sever a portion of its water rights in the Reservoir and transfer them to the Town of Payson. Payson will pay for the expense of the water rights transfer process. Payson will be an owner of water rights just as SRP is an owner of water rights.

5. Because SRP operates the pumping facilities necessary to deliver water from the Reservoir to Payson's yet-to-be-constructed pipeline, the two entities have spent approximately one year in working out the details of an agreement wherein Payson pays its fair share of expenses necessary to update the existing pumping and transmission facilities required to deliver water to Payson's pipeline and

Payson pays its fair share of the annual operation and maintenance costs to deliver water to Payson's pipeline.

6. The Reservoir water pumping and transmission facilities will operate from April through December of each year. During winter months, Payson will operate local wells for public water supply.

7. The annual average water yield from the Reservoir is 11,000 acre-feet (a/f). Payson's water right will be 3,000 a/f. Payson's proportionate share of the annual water yield of the Reservoir is 3,000/11,000 or 3/11ths or 27.2 % of the yield. This basic formula determines the amount of fiscal participation by Payson for improvements to the Reservoir water pumping and transmission facilities and for Payson's annual share of the operation and maintenance of these facilities.

8. Shortly after the Agreement is approved by both parties, Payson will pay approximately $1,500,000.00 for our 27.2% share of improvements made to date to the Reservoir water pumping facilities to make them modern and reliable and secure. Improvements include replacement of deteriorated pipe sections and support towers where the pipe crosses washes. Electrical system and control improvements, Cragin dam inspections, engineering and environmental studies, etc. are also needed. These are referred to as capital costs.

9. Additional capital costs to be incurred by Payson in the next four or five years are estimated in the amount of $4,500,000.00 and will be paid by Payson on an annual basis pursuant to billing by SRP.

10. Reservoir water received by Payson will be used within Payson's water service area, which is all land within the town limits.

11. If Payson ever decides not to use water from the Reservoir we must transfer our water right to SRP at no cost to SRP. SRP is not charging Payson anything for the 3,000 a/f water right.

12. Payson is entitled to 27.2% of water stored in Reservoir, except for 2,165 a/f for minimum pool fish habitat. Reservoir may not always be at full capacity so Payson may not always get 3,000 a/f. Some years Payson may get up to 3,500 a/f annually.

13. Each fall SRP gives Payson prediction of water availability for the upcoming year.

14. Shortly thereafter Payson places water order for the upcoming year.

15. In spring Payson and SRP meet and confer on final Payson water order and on SRP's annual operating plan and projected expenses for the year.

16. In early summer SRP bills Payson for 27.2% of annual operating plan costs and Payson makes monthly payments to SRP for these costs based on water delivered to Payson's pipeline. This is what determines the cost per acre-foot or cost per thousand gallons that Payson pays for delivery of Payson's water to Payson's

pipeline. Payson does not pay for the water, just the expense of pumping and delivering it.

17. Payson can receive extra water from Reservoir by supplying other water source to SRP downstream facility in return for greater amount from Reservoir.

18. SRP is responsible for transporting Payson's Reservoir water to Payson's pipeline or point of delivery approximately 14.5 miles east of Payson.

19. Payson is limited by Agreement to pump no more than 2,520 acre-feet (Payson currently has this capability) of groundwater annually from existing Town wells or any new wells in the Town water service area or an expanded Town water service area. This limitation is based on 10-year rolling average. Payson could use more in some years and less in some years but not exceed 25,200 a/f in any ten-year period. If Payson exceeds the rolling ten year average, Payson must replace an equal amount of water to SRP.

20. Payson can exceed groundwater pumping cap in an emergency.

21. Payson water resources (groundwater, surface water and reclaimed effluent) must serve any new land annexed to expand town boundaries.

22. Payson may recharge local groundwater aquifer with excess Reservoir water if allowed by State of Arizona.

23. Payson must report to SRP amount of groundwater pumped and Reservoir water recharged to local aquifer.

24. SRP can check accuracy of Payson's measurements of Reservoir water received from SRP and Payson's groundwater pumped.

25. SRP can charge Payson additional funds if Payson measurement is inaccurate (under-reporting) or refund to Payson if Payson measurement is over-reporting.

26. Any Reservoir water recharged in Payson or other groundwater recharge project in Payson that is withdrawn by Payson does not count against the annual groundwater pumping limitation.

Basic premise of contract is that of a public water supply partnership between Payson and SRP. SRP expenses incurred in delivering water for Payson's benefit are Payson's responsibility.

RESOLUTION NO. 2374

A RESOLUTION OF THE MAYOR AND COMMON COUNCIL OF THE TOWN OF PAYSON, ARIZONA, APPROVING AND AUTHORIZING THE MAYOR TO EXECUTE THE *WATER RIGHTS TRANSFER, AND WATER DELIVERY AND USE AGREEMENT BETWEEN SALT RIVER WATER USERS' ASSOCIATION, SALT RIVER PROJECT AGRICULTURAL IMPROVEMENT AND POWER DISTRICT, AND TOWN OF PAYSON* (C.C. CRAGIN RESERVOIR).

WHEREAS, water is a critical and limited resource in the State of Arizona, especially in times of drought; and

WHEREAS, the Salt River Valley Water Users' Association, the Salt River Project Agricultural Improvement and Power District, and the Town of Payson have negotiated an agreement that will allow the Town of Payson to obtain water from the C. C. Cragin Reservoir for the use of the Town (the "Agreement"); and

WHEREAS, the Agreement has been reduced to writing; and

WHEREAS, the Agreement has been approved by the Salt River Valley Water Users' Association and the Salt River Project Agricultural Improvement and Power District; and

WHEREAS, the approval, execution and entry into the Agreement will satisfy the water needs of the Town of Payson for the foreseeable future and is in the best interests of the Town of Payson,

NOW, THEREFORE, THE MAYOR AND COMMON COUNCIL OF THE TOWN OF PAYSON, ARIZONA, DO HEREBY RESOLVE AS FOLLOWS:

Section 1. That the Water Rights Transfer, and Water Delivery and Use Agreement between Salt River Valley Water Users' Association, Salt River Project Agricultural Improvement and Power District, and Town of Payson, attached hereto as Exhibit "A" and incorporated herein as though set forth in full at this point, be and is hereby approved in substantially the form as set forth in said Exhibit "A".

Section 2. That the Mayor of the Town of Payson be and is hereby authorized to execute such Agreement in substantially the form attached.

Section 3. That the Town of Payson be and hereby is authorized to take such other and further actions as are necessary or appropriate to carrying out the terms and purposes of the Agreement.

Section 4. That, prior to its execution, the Town of Payson be and hereby is authorized to make such revisions to the Agreement as may be approved by all the parties thereto which are in keeping with the purpose and intention expressed in the Agreement attached as Exhibit "A".

PASSED AND ADOPTED BY THE MAYOR AND COMMON COUNCIL OF THE TOWN OF PAYSON, ARIZONA, this _____ day of _____, 2008, by the following vote:

AYES _____ NOES _____ ABSTENTIONS _____ ABSENT _____

_____
F. Robert Edwards, Mayor

ATTEST:

_____
Silvia Smith, Town Clerk

APPROVED AS TO FORM:

_____
Samuel I. Streichman, Town Attorney

Deleted: *April 23, 2008*

DRAFT May 5, 2008

WATER RIGHTS TRANSFER, AND
WATER DELIVERY AND USE AGREEMENT
BETWEEN
SALT RIVER VALLEY WATER USERS' ASSOCIATION,
SALT RIVER PROJECT AGRICULTURAL IMPROVEMENT AND POWER DISTRICT,
AND
TOWN OF PAYSON

REVISED
EXHIBIT "A"
to Resolution No. 2374

Addendum to MAY 06 2008 Sp.1
Res. 2374

WATER RIGHTS TRANSFER, AND
WATER DELIVERY AND USE AGREEMENT
BETWEEN
SALT RIVER VALLEY WATER USERS' ASSOCIATION,
SALT RIVER PROJECT AGRICULTURAL IMPROVEMENT AND POWER DISTRICT,
AND
TOWN OF PAYSON

TABLE OF CONTENTS

PARAGRAPH	TITLE	PAGE
1.	PARTIES	
2.	RECITALS	
3.	AGREEMENT	
4.	DEFINITIONS	
5.	SCOPE OF AGREEMENT	
6.	EFFECTIVE DATE AND TERM	
7.	TRANSFER OF WATER RIGHTS; REVERSION	
8.	PAYSON STORED WATER	
9.	DELIVERY AND DISTRIBUTION	
10.	INTERRUPTIONS OR REDUCTIONS IN DELIVERY	
11.	WATER QUALITY AND INDEMNITY	
12.	UNDERGROUND WATER PUMPED BY TOWN AND RECEIVED FROM OTHERS	
13	RECHARGE AND RECOVERY OF PAYSON STORED WATER	
14.	FLOW MEASUREMENT	
15.	WATER ACCOUNTING AND REPORTING	
16.	FUTURE WATER EXCHANGES	
17.	OPERATION, MAINTENANCE, AND CAPITAL BUDGET PLAN	
18.	BILLING AND PAYMENT OF CHARGES; ADJUSTMENTS	
19.	APPOINTMENT/DUTIES OF AUTHORIZED REPRESENTATIVES	
20.	UNCONTROLLABLE FORCES	

21. GILA RIVER AND LITTLE COLORADO RIVER BASIN WATER RIGHTS ADJUDICATIONS
22. ACCESS TO PREMISES AND FACILITIES .....
23. AUDIT .....
24. RESOLUTION OF DISPUTES .....
25. ACTION PENDING RESOLUTION OF DISPUTES .....
26. TIME OF ESSENCE .....
27. EXHIBITS .....
28 NOTICES .....
29. WAIVER .....
30. CONFLICT OF INTEREST .....
31. GOVERNING LAW .....
32. INTERPRETATION .....
33. HEADINGS .....
34. ASSOCIATION, SRPAI&PD (DISTRICT) ASSIGNS AND SUCCESSORS .....
35. ENTIRE AGREEMENT .....
36. NONSEVERABLE AGREEMENT .....

Page numbers to be determined at a later date.

EXHIBITS		NO. OF PAGES
4.19:	TOWN WATER SERVICE AREA	1
7.1:	SEVERANCE AND TRANSFER APPLICATION	—
7.4:	TOWN CERTIFICATE OF WATER RIGHT	—
12.5:	EXAMPLES OF CUMMULATIVE 10-YEAR PUMPING CALCULATIONS	1
14.1:	VALIDATION CRITERIA FOR POINTS OF MEASUREMENT; CLOSED-PRESSURIZED PIPE CONFIGURATION	2
16:	PRINCIPLES OF WATER EXCHANGE AGREEMENT	2
18.2.1	TERMS AND CONDITIONS FOR PAYMENT OF COSTS DESCRIBED IN SUBSECTIONS 18.1.1AND 18.1.2	1

WATER RIGHTS TRANSFER, AND
WATER DELIVERY AND USE AGREEMENT
BETWEEN
SALT RIVER VALLEY WATER USERS' ASSOCIATION,
SALT RIVER PROJECT AGRICULTURAL IMPROVEMENT AND POWER DISTRICT,
AND
TOWN OF PAYSON

1. PARTIES:

The Parties to this Water Rights Transfer and Water Delivery and Use Agreement (Agreement) entered into this _____ day of _____, 2008, are the TOWN OF PAYSON, ARIZONA, ("Town"); and the SALT RIVER VALLEY WATER USERS' ASSOCIATION, an Arizona Corporation ("Association"), and the SALT RIVER PROJECT AGRICULTURAL IMPROVEMENT AND POWER DISTRICT, a political subdivision of the State of Arizona ("District")(the Association and the District are sometimes collectively referred to as "SRP").

2. RECITALS:

This Agreement is made with regard to the following:

2.1 The Association is the agent of the United States of America in the operation of the Salt River Federal Reclamation Project, a federal reclamation project, pursuant to an agreement dated September 6, 1917, and is also the agent for the District in the operation of the federal reclamation project pursuant to an agreement dated March 22, 1937, as amended by agreements dated February 28, 1944, and September 12, 1949. Blue Ridge Reservoir, now known as C. C. Cragin Reservoir, is a component of the Salt River Federal Reclamation Project. The District holds the water right for water stored in and diverted from C. C. Cragin Reservoir under Certificate of Water Right ("CWR") No. 3696.0001.

2.2 The Town is a municipal corporation, which distributes water to customers within the Town Water Service Area located in northern Gila County. Currently, the Town relies exclusively on Underground Water to serve its customers. The long-term prospects of developing additional Underground Water by the Town are uncertain and have caused the Town to seek alternative water supplies to serve its customers. Over the years the Town, Association, and District have been in conflict over the Town's plans to develop alternative

water supplies.

2.3 Under provisions of the Arizona Water Settlements Act of 2004 (Public Law 108-451) up to 3,500 acre-feet of water per year may be made available from Blue Ridge Reservoir for municipal and domestic uses in northern Gila County, Arizona without cost to the Salt River Federal Reclamation Project.

2.4 In an effort to provide a more reliable water supply for the Town and to eliminate conflict over the current and future use of Underground Water by the Town, the Parties desire to enter into this Agreement.

3. AGREEMENT:

In consideration of the mutual covenants herein set forth, the Parties hereto agree as follows:

4. DEFINITIONS:

The definitions used in this Agreement shall govern the interpretation of this Agreement only. As used in this Agreement the following terms, when capitalized, mean:

4.1 Active Conservation Capacity: The capacity of C.C. Cragin Reservoir used to store water on a continuous basis, excluding water stored in the Inactive Capacity. The initial Active Conservation Capacity shall be set at 12,832 acre-feet and shall be adjusted periodically as provided in Subparagraph 8.6.

4.2 ADWR: The Arizona Department of Water Resources or its successor agency.

4.3 Authorized Representative(s): Representatives of the Parties appointed to administer certain provisions of this Agreement, pursuant to Paragraph 19.

4.4 C. C. Cragin Project: The water storage reservoir known as C. C. Cragin Reservoir situated in Coconino and Gila Counties, Arizona, consisting generally of C. C. Cragin Dam and all pipelines, tunnels, buildings, hydroelectric generating facilities, and other structures of every kind, transmission, telephone and fiber optic lines, pumps, machinery, tools, and appliances; and all real or personal property, appurtenant to or used, or constructed or otherwise acquired to be used, in connection with C. C. Cragin Reservoir.

4.5 Delivery Point: The point along the East Verde River where SRP delivers Payson Stored Water from the C. C. Cragin Project and commonly referred to as the power plant tailrace connection.

4.6 Flow Measurement System: A flow measurement system configured to relevant industry standards including a primary water measurement device or method (flow meter, weir, gate, electronic transducer, etc.) and a detection device (float, depth probe, manometer, flow meter, etc.) for the real-time monitoring of water able to 1) indicate a rate of flow for operation purposes, and 2) produce a volume totalization for water accounting purposes. The detection device shall be electronically compatible with SRP requirements for data collection, software, telemetry, and water totalization methods and reporting, unless otherwise agreed by the Authorized Representatives. The Flow Measurement System shall be configured to enable an adequate secondary measurement (field verification) for proof of accuracy as provided for in Exhibit 14.1 of this Agreement.

4.7 Inactive Capacity: The capacity of C. C. Cragin Reservoir below the intake of the pump inlet tunnel at C. C. Cragin Reservoir.

4.8 Net May 1 Storage: The total amount of water in storage in the Active Conservation Capacity on May 1 of each year.

4.9 Operation, Maintenance, and Capital Budget Plan: An annual plan developed by SRP with input from the Town addressing the capital requirements and the operation and maintenance (O&M) activities for the C. C. Cragin Project and the planned budget reflecting SRP's Capital Costs and SRP's O&M Costs associated with the C. C. Cragin Project from May 1 through the following April 30 of each year.

4.10 Payson Stored Water: The amount of water stored in C. C. Cragin Reservoir allocated to the Town as determined under Paragraph 8.

4.11 Point of Measurement: A point agreed to by the Authorized Representatives where it is required to accurately ascertain the total amount of:

4.11.1 Payson Stored Water delivered by SRP to the Town's Delivery Point for delivery to the Town Water Service Area; or

4.11.2 Payson Stored Water, effluent, or surface water recharged and/or recovered by the Town.

4.11.3 The Points of Measurement, which may be changed by the Authorized Representatives upon mutual agreement, are listed in Exhibit 4.11.3.

4.12 Salt River Project (SRP): The Salt River Project Agricultural Improvement and Power District and the Salt River Valley Water Users' Association.

4.13 SRP's Capital Costs: All costs incurred by SRP for the acquisition and improvement of land, facilities, equipment, and inventories related to the C. C. Cragin Project, which shall include but not be limited to labor, overhead, materials, supplies, spare parts, equipment purchase and rental, and transportation. Prior to May 1, 2009, all expenses incurred by SRP shall be accrued as SRP's Capital Costs.

Deleted: the date of substantial completion of the C. C Cragin Project

4.14 SRP's O&M Costs: All costs incurred by SRP for the operation and maintenance of all C. C. Cragin facilities, except for those costs defined as SRP's Capital Costs. Such costs shall include, but not be limited to, costs for the following items: insurance, inspections, permits, taxes, fees, licenses, contract services, legal services, accounting, travel, environmental compliance, repairs, testing, labor, salaries, overhead, materials, supplies, expenses, equipment, vehicles, energy, and fuel.

4.15 Town Water Service Area: The area shown on the map attached as Exhibit 4.15 where Underground Water may be withdrawn and used and where Payson Stored Water may be used. The exterior boundary of such area is defined as any land located within the Town's corporate boundary, and shall include the entire Tonto Apache Reservation boundary, and any land owned in fee by the Tonto Apache Tribe or held in trust by the United States for the Tribe and its members. The Town Water Service Area may be amended from time to time

by the Authorized Representatives.

4.16 Underground Water: Water withdrawn from underground sources by the Town from within the Town Water Service Area, or by any other person or entity from within the Town Water Service Area and provided to the Town, or water withdrawn from underground sources outside of the Town Water Service Area by the Town, including from the Tower Well, or any other person or entity and provided to the Town, for use within the Town Water Service Area. Underground Water does not include the Town's recovery of Payson Stored Water, effluent, or other surface water in accordance with this Agreement.

Deleted: or the Tower Well

Deleted: , other than the Tower Well,

5. SCOPE OF AGREEMENT:

This Agreement shall encompass only the following services or arrangements between the Parties:

5.1 The partial severance and transfer of water rights associated with CWR No. 3696.0001 from SRP to the Town in amounts not to exceed the parameters described in Subparagraph 7.1.

5.2 The storage, diversion, and delivery of Payson Stored Water by SRP from C. C. Cragin Reservoir to the Delivery Point.

5.3 Limitations on the withdrawal and use of Underground Water by the Town and others.

6. EFFECTIVE DATE AND TERM OF AGREEMENT:

6.1 This Agreement shall become effective upon execution by the Parties. Unless terminated pursuant to Subparagraph 6.2, this Agreement shall remain in effect in perpetuity.

6.2 This Agreement shall terminate upon the occurrence of any of the following: (1) C. C. Cragin Reservoir no longer exists or is permanently disabled from storing water within the Active Conservation Capacity due to any circumstance; (2) the Town is permanently precluded from using any water from C. C. Cragin Reservoir; (3) as provided in Subparagraph 7.6;. or (4) ADWR determines, in a final nonappealable order, not to approve the severance and transfer of a portion of CWR No. 3696.0001 to the Town as contemplated in Paragraph 7.

7. TRANSFER OF WATER RIGHTS; REVERSION

7.1 The District shall:

7.1.1 Upon execution of this Agreement, assign to the Town that portion of the water right under CWR No. 3696.0001 for use within the Town Water Service Area so as to yield at the Town's Delivery Point, a n amount not to exceed three thousand five hundred (3,500) acre-feet per calendar year, and three thousand (3,000) acre-feet average per calendar year.

7.1.2 When mutually agreed to by the Parties, file with ADWR an application to sever and transfer the assigned portion of water right under CWR No. 3696.0001 to the Town for municipal uses within the Town Water Service Area. The severance and transfer application shall become Exhibit 7.1. For purposes of this Agreement, "municipal uses" shall mean all beneficial uses of water, including for recharge, other than the use of water for application to two or more acres of land to produce plants or parts of plants for sale or human consumption, or for use as feed for livestock, range livestock or poultry, as such terms are defined in A.R.S. § 3-1201,. The amount of water available to the Town each calendar year pursuant to the certificate of water right referenced in Subparagraph 7.4 shall be determined pursuant to Paragraph 8.

7.2 It is expressly understood by the Parties that the portion of the water right assigned in Subparagraph 7.1.1 is limited to a right to divert and use water from C. C. Cragin Reservoir and that no storage right is granted to the Town. Subject to Subparagraph 8.4, SRP shall not take any action to impair the Town's ability to exercise the water right assigned in Subparagraph 7.1.1, provided that the severance and transfer contemplated in Subparagraph 7.1.2 is approved by ADWR.

7.3 SRP shall pay, and the Town shall reimburse SRP, for all application, notice, publication, and other fees and expenses, including legal fees and expenses, associated with ADWR's water right severance and transfer administrative process for the application referenced in

Subparagraph 7.1.2.

7.4 SRP and the Town shall jointly cooperate and support the severance and transfer application through ADWR's administrative process.

7.5 The certificate of water right, when issued to the Town by ADWR, shall become Exhibit 7.5 of this Agreement.

7.6 If, at any time after the effective date of this Agreement, the Town determines that it no longer needs or desires the water rights described in Paragraph 7, the Town shall immediately assign such water rights to SRP, at no cost to SRP, and this Agreement shall thereafter terminate. Provided, however, that if a certificate of water right has been issued to the Town, SRP and the Town shall jointly cooperate and support a subsequent application for severance and transfer of the water rights to SRP under ADWR's administrative process.

7.7 In the event this Agreement is terminated pursuant to Subparagraph 6.2, the Town shall immediately reassign the water right assigned to it pursuant to Subparagraph 7.1.1. Provided, however, that if a certificate of water right has been issued to the Town, SRP and the Town shall jointly cooperate and support a subsequent application for severance and transfer of the water rights to SRP under ADWR's administrative process.

8. PAYSON STORED WATER

8.1 On May 1 of each year, SRP shall calculate the amount of Payson Stored Water to be credited to the Town for diversion and use within the Town Water Service Area from May 1 of that year through April 30 of the following calendar year as the sum of: (1) twenty seven and two-tenths percent (27.2%) of Net May 1 Storage, plus (2) twenty seven and two-tenths percent (27.2%) of the amount of water diverted from C. C. Cragin Reservoir during the period from January 1 through April 30 of that year by SRP for its own use. Provided, however, that the sum of (1) and (2) shall not exceed the lesser of either twenty seven and two-tenths percent (27.2%) of the Active Conservation Capacity, or an amount of water that would produce an average of three thousand (3,000) acre-feet for the calendar years from

the date that SRP commences water deliveries to the Town. The maximum diversion rate by the Town from the Delivery Point shall not exceed the rate as determined by the Authorized Representatives and memorialized in writing

8.2 Payson Stored Water credits shall not be subject to daily evaporation and seepage losses occurring at C. C. Cragin Reservoir or transmission losses for Payson Stored Water transported from C. C Cragin Reservoir to the Town's Delivery Point.

8.3 Payson Stored Water credits remaining in the Payson Stored Water account at 11:59 p.m. on April 30 of each year shall not be carried forward and the credits in the Payson Stored Water account, as prescribed in Paragraph 15, shall be set to zero at that time. In the event that the Town diverts water in excess of the available Payson Stored Water credits in any twelve (12)-month period, such excess shall be debited against the Payson Stored Water credits made available to the Town on the next May 1.

8.4 Payson Stored Water credits shall be subject to reduction as provided in this Subparagraph if any agency of the state or federal government, or other entity with requisite jurisdiction, requests or requires SRP to release water from C. C. Cragin Dam to: (1) preserve the structural safety of C. C. Cragin Dam, (2) mitigate environmental impacts of the C. C. Cragin Project, (3) satisfy senior downstream water rights, or (4) preserve the structural safety of C. C. Cragin Dam if a reasonable person would determine independently of such a request or requirement that it is necessary or prudent to release water from C. C. Cragin Dam. In the event that SRP releases water from C. C. Cragin Reservoir pursuant to this Subparagraph 8.4, Payson Stored Water credits shall be reduced by twenty seven and two-tenths percent (27.2%) of the amount of water released, up to the amount of any remaining Payson Stored Water credits in its account at the time such releases are made.

8.5 If SRP releases water from C. C. Cragin Dam pursuant to Subparagraph 8.4, SRP shall make reasonable efforts to notify the Town prior to making such releases of water from C. C. Cragin Dam, provided that nothing in this Subparagraph 8.5 shall be deemed or construed

to in any manner limit SRP's ability to make such releases.

8.6 The Parties acknowledge that sedimentation will reduce the water storage capacity at C. C. Cragin Reservoir. In coordination with the Town and in conjunction with the Operation, Maintenance and Capital Budget Plan, SRP may plan and conduct periodic sediment surveys to determine the total water storage capacity and the Active Conservation Capacity of C. C. Cragin Reservoir. Costs for the sediment survey shall be included in SRP's O&M Costs. Beginning on May 1 immediately after completion of the most recent sediment survey, the amount specified in Subparagraph 4.1 shall be adjusted to reflect the Active Conservation Capacity determined in the sediment survey. Such adjusted amount shall be used for purposes of determining the Payson Stored Water amount pursuant to Subparagraph 8.1 until next adjusted.

9. DELIVERY AND DISTRIBUTION:

9.1 The Town may only deliver and distribute water received from C. C. Cragin Reservoir for use by customers within the Town Water Service Area.

9.2 To the extent that there are credits in the Payson Stored Water account, and subject to Paragraph 10, water deliveries by SRP to the Town shall be made upon the Town's request. Requests for delivery by the Town shall be provided to the designated SRP department in conformance with procedures established by SRP.

9.3 SRP shall be responsible for transporting Payson Stored Water to the Delivery Point, as such point may be revised by the Authorized Representatives. The Town shall have the sole responsibility of transporting Payson Stored Water from the Delivery Point for distribution within the Town Water Service Area.

9.4 SRP shall review, modify, and approve any plans for the Town's connection to the Delivery Point to ensure compatibility with the operation and maintenance of the C. C. Cragin Project. The Town shall reimburse SRP for all costs associated with the review, modification, approval, and, once completed, inspection of such connection.

9.5 The Town's right to fix or determine the rates or charges imposed by the Town for service from the Town's water system including, without limitation, rates or charges, for the delivery of Payson Stored Water from the C. C. Cragin Project shall not be affected by any provisions of this Agreement and such rates or charges shall be within the sole discretion of the Town.

10. INTERRUPTIONS OR REDUCTIONS IN DELIVERY:

Water delivered to the Town shall be in accordance with the Town's request pursuant to Paragraph 9, except for (1) interruptions or reductions in deliveries due to: (A) water supply or water delivery facility limitations, or (B) uncontrollable forces as defined in Paragraph 20; (2) interruptions or reductions which are reasonably necessary or desirable for the purposes of maintenance, repairs, replacements, installations, investigations and inspections of the C. C. Cragin Project equipment, works, and facilities including, but not limited to, system dry-ups; provided that SRP, except in case of emergency, will give the Town reasonable, advance notice of temporary interruptions or reductions and will attempt to remove the cause thereof with diligence; and (3) interruptions or reductions in deliveries due to the Town's delinquency in the payment of charges billed by SRP as described in Subparagraph 18.2.5.

11. WATER QUALITY AND INDEMNITY:

SRP neither guarantees nor warrants the quality of water SRP delivers to the Town at any Delivery Point pursuant to this Agreement. The Town assumes all responsibility and liability for purifying or otherwise treating such water delivered by SRP at the Town's Delivery Point to meet applicable water quality standards established by federal, state or local authorities. The Town shall and does hereby release SRP from liability for any claims related to the quality of water delivered by SRP to the Town Delivery Point, except liability resulting in whole or in part from SRP's gross negligence. Except as provided in the preceding sentence, the Town shall assume all liability against all losses, of whatsoever kind or nature, whether sounding in tort, strict liability or contract, from claims by third parties resulting from the delivery of such water to the Town and to the Delivery Point. The Town shall defend and hold harmless SRP, its Directors, Governors, employees, officers, and agents from

and against all such claims for such losses except those losses resulting in whole or in part from SRP's gross negligence. Nothing in this Agreement precludes the Town from asserting claims of whatsoever kind or nature, whether sounding in tort, strict liability or contract, against persons or entities other than SRP, its Directors, Governors, employees, officers, or agents, as a result of actions or failures to act that impair the quality of water delivered to the Town Delivery Point from the C. C. Cragin Project.

12. UNDERGROUND WATER WITHDRAWN BY TOWN AND RECEIVED FROM OTHERS:

12.1 Upon execution of this Agreement, the Town agrees not to: (1) develop any additional wells to withdraw and use Underground Water from current and future land administered by the United States Forest Service, or any successor agency, located outside the Town Water Service Area, and (2) withdraw Underground Water or accept delivery of Underground Water from wells developed by the Town or others on current or future Forest Service land, or any successor agency, located outside the Town Water Service Area.

12.2 Upon execution of this Agreement, the Town shall require that, as a condition of annexation of new territory to the Town, all residential, commercial, and industrial developments in the area to be annexed shall connect to the Town's water delivery system and obtain water exclusively from the Town.

12.3 Beginning in the calendar year the Town first receives water from SRP pursuant to this Agreement, the Town shall limit the use of Underground Water to two thousand five hundred and twenty (2,520) acre-feet per calendar year, as measured in accordance with Subparagraph 12.4. Nothing in this Agreement shall be construed to prevent the Town from rehabilitating, replacing, or deepening its existing wells so long as the Town's withdrawal and receipt of Underground Water do not exceed 2,520 acre-feet, except as provided in Subparagraph 12.6.

Deleted: withdrawal

Deleted: , and the receipt of Underground Water from others, within the Town Water Service Area and the use of Underground Water within the Town Water Service Area

12.4 The Town's compliance with Subparagraph 12.3 shall be determined by comparing the rolling, cumulative ten (10)-year total (hereinafter "cumulative total") on a calendar-year

basis, as adjusted pursuant to Subparagraph 12.5.1 and Subparagraph 12.5.3, to ten (10) times the amount prescribed in Subparagraph 12.3 (25,200 acre-feet).

12.5 Unless otherwise agreed by the Authorized Representatives, if at the end of any calendar year, the cumulative total exceeds 25,200 acre-feet, the Town shall, during the subsequent calendar year, perform one or more of the following:

12.5.1 Within the Town Water Service Area, recharge Payson Stored Water, effluent, or other surface water and not recover an amount of water equal to at least the difference between the cumulative total and 25,200 acre-feet. Upon such recharge, the amount of water recharged and not recovered shall be credited against the Town's withdrawal of Underground Water for purposes of Subparagraph 12.5.

12.5.2 Reduce the Town pumping of Underground Water in the subsequent calendar year by an amount of water equal to at least the difference between the cumulative total and 25,200 acre-feet..

12.5.3 As agreed to by the Authorized Representatives, deliver or cause to be delivered to SRP an amount of water equal to at least the difference between the cumulative total and 25,200 acre-feet. Upon such delivery, the amount of the delivery shall be credited against the Town's withdrawal of Underground Water for purposes of Subparagraph 12.5.

12.5.4 Examples of cumulative 10-year pumping calculations are shown in Exhibit 12.5.

12.6 Under emergency conditions, the Town may use Underground Water in excess of the quantity permitted in Subparagraphs 12.3 and 12.4 without triggering the obligations under Subparagraph 12.5. For purposes of this subparagraph, "emergency conditions" shall mean those periods when Payson Stored Water is not available for delivery to the Town and its customers, or is available in such reduced quantities that the Town is unable to supply the

Deleted: withdraw

Deleted: within the Town Water Service Area and the Tower Well, and receive water withdrawn by others outside the Town Water Service Area and provided to the Town for delivery to customers within the Town Water Service Area,

municipal use demands within the limitations established by Subparagraphs 12.3 and 12.4, but only after utilizing all Payson Stored Water physically available to the Town. When the Town determines that such emergency conditions exist or are imminent, the Town shall request a meeting of the Authorized Representatives at which the Town shall explain why it concludes that emergency conditions exist or are imminent, and how long the Town anticipates those conditions will persist, if a reasonable basis for making that projection exists. The Authorized Representatives shall cooperate in good faith in agreeing that such emergency conditions do or do not exist, or are or are not imminent.

13. RECHARGE AND RECOVERY OF PAYSON STORED WATER AND OTHER WATER

13.1 Except as otherwise provided in Paragraph 12.5.1, Payson Stored Water may be recharged and recovered by the Town

13.2 Payson Stored Water recharged by the Town pursuant to Subparagraph 13.1 shall be withdrawn from within the area of impact as such term is defined and used under Arizona Revised Statutes, Chapter 3.1, Article 1.

13.3 The recharge and recovery of Payson Stored Water or other water shall be performed in accordance with any and all applicable hydrologic reports, facility operational reports, and Arizona Department of Environmental Quality aquifer protection permits or other permits issued for the facility by any state or federal regulatory agency, if any.

14. FLOW MEASUREMENT:

14.1 The Town shall, at its sole expense and with the approval of the Authorized Representatives, construct, install, and maintain a Flow Measurement System at each Point of Measurement in accordance with manufacturers' specifications for the specific application and Exhibit 14.1. At all Town Points of Measurement, the Town shall maintain the accuracy of the associated Flow Measurement System as close to zero error as practical but in no event shall a uniform distribution of accumulated error deviate from actual volume by more than:

14.1.1. plus or minus five percent (5%) at the flow (rate) indicating device, unless otherwise agreed by the Authorized Representatives, and

14.1.2. plus or minus two percent (2%) of the annual totalized volume, unless otherwise agreed by the Authorized Representatives.

14.2 The Town shall prepare and regularly implement testing and recalibration procedures for the Flow Measurement Systems, which procedures must be approved by the Authorized Representatives. At least once every six (6) months at the Town's Delivery Point, and at least once every twelve (12) months at all other Points of Measurement, unless otherwise agreed by the Authorized Representatives, the Town shall recalibrate its Flow Measurement Systems as close to zero error as practical, but in no event shall error exceed the accuracy standard in Subparagraph 14.1. The Town shall orally or in writing notify SRP's Authorized Representative of when such recalibration is planned so that SRP may observe the procedure. SRP may at reasonable times, at its sole expense and after reasonable notice to the Town, test or have tested the Flow Measurement System to determine its accuracy. Such test shall be performed in accordance with industry standards and shall not interfere with the operation of the Town's water system. Annual secondary flow verification tests shall be performed in accordance with the procedures in Exhibit 14.1 (Validation Criteria for Points of Measurement: Closed-Pressurized Pipe Configurations) of this Agreement.

14.3 In the event that water accounting records or any routine or special test of the Flow Measurement System discloses an annual volume, or a flow measurement error, that exceeds the limits provided in Subparagraph 14.1, all bills and water accounting affected by such limits having been exceeded may be adjusted by SRP based on the best available data, subject to Subparagraph 18.2 and Paragraph 24. Adjustments shall not encompass more than the elapsed time since the last preceding test.

14.4 The annual amount of Underground Water withdrawn by the Town and received by the Town from others shall be measured in accordance with industry standards and reported to

SRP in accordance with Paragraph 15.3. In accordance with Paragraph 22, SRP may test any water measurement system utilized to record and report the withdrawal of Underground Water. Such test shall be performed in accordance with industry standards and shall not interfere with the operation of the Town's water system. In the event that any water measurement system fails to meet industry standards for accuracy, the Authorized Representatives shall confer to develop a course of action to remedy such failure and to adjust the water accounting records of SRP and the Town within a reasonable period of time.

15. WATER ACCOUNTING AND REPORTING:

15.1 SRP shall establish a Payson Stored Water account for the Town and shall:

15.1.1 Credit the Payson Stored Water account at 12:01 a.m. on May 1 of each year with an amount of water as provided for in Subparagraph 8.1.

15.1.2 Debit the Payson Stored Water account with the amount of Payson Stored Water diverted from C. C. Cragin Reservoir and delivered to the Town's Delivery Point.

15.1.3 Extinguish all unused Payson Stored Water credits remaining in the Payson Stored Water account at 11:59 p.m. on April 30 of each year as provided for in Subparagraph 8.3.

15.1.4 Debit the Payson Stored Water account at 12:01 a.m. on May 1 of each year with an amount of water that was diverted in excess of the Payson Stored Water credits made available to the Town on the previous May 1.

15.1.5 Debit the Payson Stored Water account in accordance with Subparagraph 8.4 in the event that water is released from C. C. Cragin Reservoir.

15.2 SRP shall maintain a record of the total amount of Payson Stored Water diverted and made available to the Town. The amount of Payson Stored Water for which the Town will be charged and deemed to have received shall be the greater of the actual amount diverted by

the Town at the Delivery Point or the amount ordered by the Town and delivered by SRP to the Delivery Point.

15.3 Town shall report to SRP each month:

15.3.1 The amount of Payson Stored Water, effluent, or other surface water delivered to recharge facilities, the amount of evaporation charged to the water delivered to the facility, the amount of water recharged, and the amount of water recovered. The rate of evaporation charged shall be determined by mutual agreement of the Authorized Representatives.

15.3.2 The amount of Underground Water withdrawn by the Town, or by any other person or entity within the Town Water Service Area and provided to the Town, and delivered to customers within the Town Water Service Area.

15.3.3 The amount of Underground Water withdrawn by the Town, or by any other person or entity outside of the Town Water Service Area and provided to the Town, and delivered to customers within the Town Water Service Area pursuant to Subparagraph 12.6.

15.4 The Town shall report the amount of water pursuant to Subparagraph 15.3 for each month on or before the eighth (8^{th}) business day of the following month to the SRP department designated by SRP.

15.5 SRP shall report the amounts prescribed in this Paragraph 15 and the associated water accounting to the Town on a monthly basis by the end of the month following the month for which the accounting was performed. Such report shall include a year-to-date accounting summary on a month-end basis.

16. FUTURE WATER EXCHANGES

If the Town acquires other water supplies that it cannot use directly, but could do so by a lawful exchange for SRP's water from the C. C. Cragin Project, the Parties agree to develop a water exchange agreement in accordance with the principles set forth in Exhibit 16. If the Town

identifies another water supply in the Verde River Watershed to which SRP holds a vested right and the Town wishes to utilize that source in exchange for its share of water from the C. C. Cragin Project, the Parties agree to use their best efforts to develop a water exchange agreement in accordance with the principles set forth in Exhibit 16.

17. OPERATION, MAINTENANCE, AND CAPITAL BUDGET PLAN:

17.1 SRP shall prepare an Operation, Maintenance, and Capital Budget Plan (Plan) prior to each SRP fiscal year (currently May through April). Such Plan shall include, at a minimum, a description and schedule of the projected operation and maintenance activities, the budget level cost estimates of such activities, the budget level cost estimate of any capital improvements and acquisitions, and the projected water delivery schedule for each Party for each month of the Plan. The budget level cost estimates shall be increased by ten percent (10%) for contingencies. Development of the Plan shall be accomplished in the following manner, provided however, that the dates referenced in Subparagraphs 17.1.1 through 17.1.4 may be adjusted by mutual agreement of the Authorized Representatives:

17.1.1 On or before November 1 of each year, SRP shall provide to the Town a non-binding runoff and water storage forecast and SRP's projected delivery schedule for water from C. C. Cragin Reservoir to the East Verde River for the succeeding May 1 through April 30 time period.

17.1.2 On or before December 1 of each year, Town shall submit to SRP the projected water orders for Payson Stored Water on a monthly basis for the succeeding calendar year.

17.1.3 On or before February 1 of each year, SRP shall submit the proposed Plan to the Town, together with any revision to the runoff and water storage forecast and delivery schedule as provided for in Subsection 17.1.1.

17.1.4 On or before March 1 of each year, SRP shall confer with the Town on the proposed Plan, and thereafter finalize the Plan prior to April 1 of that year.

17.2 Upon the written request by either Party, the Plan may be modified to accommodate operations, maintenance, and capital construction activities not anticipated prior to the adoption of the initial Plan. Within a reasonable period of time, the Authorized Representatives shall consult and SRP shall adopt a revised Plan. Such revised Plan shall remain in effect until the next revised Plan becomes effective.

18. BILLING AND PAYMENT OF CHARGES; ADJUSTMENTS:

18.1 Town shall pay SRP the following:

18.1.1 Twenty seven and two-tenths percent (27.2%) of SRP's Capital Costs accrued to the C. C. Cragin Project from the date it was acquired by the District through April 30, 2008.

18.1.2 Twenty seven and two-tenths percent (27.2%) of SRP's Capital Costs budgeted for expense from May 1, 2008 through April 30, 2009.

18.1.3 Beginning on May 1, 2009, twenty seven and two-tenths percent (27.2%) of SRP's Capital Costs and twenty seven and two-tenths percent (27.2%) of SRP's O&M Costs budgeted pursuant to the Plan developed each year pursuant to Paragraph 17 of this Agreement; provided, however, that the energy portion of SRP's O&M Costs to divert and deliver water solely from the C. C. Cragin Reservoir to the Town Delivery Point shall be excluded.

Deleted: T

18.1.4 The energy portion of SRP's O&M Costs, calculated on a per acre-foot basis, to divert and deliver water solely from the C. C. Cragin Reservoir to the Town Delivery Point.

18.1.5 Fees and charges specified in Subparagraphs 7.3 and 9.4 of this Agreement and a one-time, set-up fee not to exceed $23,000 associated with the costs incurred by SRP to establish accounting programs and procedures in accordance with Paragraph 15.

18.1.6 Beginning in the calendar year that the Town first receives water from SRP

pursuant to this Agreement, an annual administration fee of $5,440, as such fee is adjusted pursuant to this Subparagraph, for the accounting and reporting responsibilities of SRP as prescribed in Paragraph 15 and, if applicable, Paragraph 16. On May 1 of 2009 and on May 1 of each year thereafter through the term of this Agreement, the annual administration fee shall be adjusted by the percent change (calculated to the nearest one-hundredth percent) in the Department of Commerce's Price Index for the Gross Domestic Product ("Index") over the twelve (12) month period ending December 31 of the preceding calendar year (measured from fourth quarter to fourth quarter). For purposes of the initial annual adjustment, the Index shall be calculated using the fourth quarter of 2007 as the base. If the Index is no longer in use, the Authorized Representatives shall agree on a replacement index. SRP may, every two (2) years commencing in 2011, evaluate and revise the annual administration fee to more accurately reflect the actual cost of performing the accounting and reporting responsibilities of SRP.

18.2 SRP shall bill the charges described in Subparagraph 18.1 to the Town, including any adjustments to previous charges, in accordance with the following:

18.2.1 SRP shall bill the Town and the Town shall pay SRP the costs as set forth in Subparagraphs 18.1.1 and 18.1.2 of this Agreement, in accordance with the terms and conditions set forth in Exhibit 18.2.1.

18.2.2 SRP shall bill the Town the costs as set forth in Subparagraphs 18.1.3 and 18.1.4 by no later than June 30 of each year and the Town shall pay SRP monthly, in twelve (12) equal installments beginning in July, on or before the last day of each month (or if such day is not a business day, on the next succeeding business day). The bill shall include a reconciliation of SRP's

Capital Costs and SRP's O&M Costs so that such budgeted costs paid by the Town do not exceed the Town's share of SRP's Capital Costs and SRP's O&M Costs as those costs are defined in Subparagraphs 4.13 and 4.14.

18.2.3 To the extent that the costs as set forth in Subparagraph 18.1.5 are known and the fee as set forth in Subparagraph 18.1.6 becomes effective, SRP shall bill the Town by no later than June 30 of each year and the Town shall pay SRP on or before the last day of July (or if such day is not a business day, on the next succeeding business day).

18.2.4 The Town shall pay SRP in good funds as provided for in this Subparagraph 18.2. Bills which are not paid by the dates as prescribed in Subparagraphs 18.2.1 (and Exhibit 18.2.1), 18.2.2, and 18.2.3 shall be delinquent and thereafter accrue an interest charge equal to the prime rate of interest as established by the Bank of America on the last business day of the month following the month for which the bill was submitted, plus two percent (2%) per annum, prorated by days, of the unpaid principal, computed daily until payment is received. Any payment received shall first be applied to any interest charges owed, and then to the charges for services rendered.

18.2.5 If the Town disputes any portion of any bill, the Town shall pay the disputed amount under protest when due and include with its payment a written statement indicating the basis for the protest. The matter shall then be resolved in accordance with Paragraph 24. If the protest is resolved and determined to be in favor of the Town, SRP shall refund to the Town any overpayment plus interest, accrued at the rate applicable pursuant to Subparagraph 18.2.4, prorated by days from the date payment was credited to the Town to the date the refund check is mailed.

18.2.6 If the Town does not pay any delinquent amount within thirty (30) days after

receipt by the Town of written notice by SRP to the Town of the delinquency, then SRP may use any available legal remedy to collect the delinquent amount. Additionally, SRP may refuse to deliver or discontinue the delivery of water under this Agreement until the delinquent amount is paid in full.

19. APPOINTMENT AND DUTIES OF AUTHORIZED REPRESENTATIVES:

19.1 SRP and the Town shall each appoint an Authorized Representative and an alternate, to administer the provisions of this Agreement assigned to the Authorized Representatives. The alternate shall act only in the absence of the Authorized Representative. All decisions and agreements of the Authorized Representatives shall be in writing and be signed by both Authorized Representatives.

19.2 In addition to any other responsibilities assigned to the Authorized Representatives in this Agreement, the Authorized Representatives:

19.2.1 Shall make available for review and comment any operating procedures developed by SRP or the Town to implement or administer the provisions of this Agreement.

19.2.2 May amend the Town Water Service Area as shown on the map attached hereto as Exhibit 4.15, pursuant to Subparagraph 4.15.

19.2.3 Shall determine the maximum diversion rate by the Town from the Delivery Point pursuant to Subparagraph 8.1.

19.2.4 Shall establish and revise the water ordering procedures, pursuant to Subparagraph 9.2.

19.2.5 May change the Delivery Point, pursuant to Subparagraph 9.3.

19.2.6 Shall confer to determine if emergency conditions do or do not exist, or are or are not imminent, pursuant to Subparagraph 12.6.

19.2.7 Shall approve the Town's Flow Measurement Systems, and the construction, installation and maintenance thereof, pursuant to Subparagraph 14.1.

19.2.8 Shall approve the Town testing and recalibration procedures for the Town Flow Measurement Systems and any changes in the required frequency of such testing and recalibration, pursuant to Subparagraph 14.2.

19.2.9 Shall confer and develop plans to repair or replace water measurement systems for recording and reporting the withdrawal of Underground Water, pursuant to Subparagraph 14.4.

19.2.10 Shall confer and mutually agree to a rate of evaporation to be applied at each water recharge facility, pursuant to Subparagraph 15.3.1.

19.2.11 Shall confer regarding the Operation, Maintenance, and Capital Budget Plan pursuant to Paragraph 17.

19.2.12 Shall agree to a replacement Index, if necessary, pursuant to Subparagraph 18.1.6.

19.2.13 Shall approve the manner of access to the premises, right of way and easements of a Party when such access is required by the other Party, pursuant to Paragraph 22.

19.2.14 Shall arrange for the requesting Party to audit the books, records and documents of the other Party directly pertaining to the billings and water accounting data required to administer this Agreement, pursuant to Subparagraph 23.1.

19.2.15 Shall respond to any notification of an exception taken as a result of an audit, pursuant to Subparagraph 23.2.

19.2.16 Shall arrange for the owing Party to return water and/or money owed as a result of an audit, pursuant to Subparagraph 12.4 and Subparagraph 23.2, or upon final resolution of a dispute, pursuant to Paragraph 24.

19.2.17 Shall jointly address any disputes as provided in Paragraph 24.

19.2.18 Shall annually review and confirm the appropriateness of SRP's and the Town's

water accounting procedures and procedures for the determination of the quantities of Payson Stored Water and Underground Water in accordance with this Agreement.

19.2.19 Shall review and develop procedures to resolve maintenance issues raised by either Party regarding service under this Agreement.

19.2.20 Shall meet at least once every three (3) months, unless they otherwise agree, to carry out the duties assigned to them by this Agreement and to discuss additional matters of common concern to SRP and the Town.

19.3 If the Authorized Representatives disagree as to any action to be taken or decision to be made, or as to the need for taking any action or making any decision, or as to whether any matter is within the scope of the Authorized Representatives' responsibilities hereunder, the question or questions at issue may be referred to the SRP Associate General Manager - Water and the Town Manager of the Town of Payson. Any issue(s) unresolved by the SRP Associate General Manager - Water and the Town Manager of the Town of Payson may be addressed in a manner consistent with Paragraph 24.

19.4 Each Party shall notify the other Party in writing within thirty (30) days after execution of this Agreement of the designation of its Authorized Representative and alternate and shall promptly notify the other Party of any subsequent changes in such designation.

19.5 The Authorized Representatives shall have no authority to modify, amend or supplement this Agreement, other than as expressly provided in this Paragraph 19.

20. UNCONTROLLABLE FORCES:

Neither Party shall be considered in default in the performance of any of its obligations hereunder when a failure of performance shall be due to uncontrollable forces; provided, however, that the Town shall not be excused from paying its then current obligation pursuant to Subparagraph 18.1.3 and Subparagraph 18.1.6. The term "uncontrollable forces" shall mean any cause beyond the control of the Party unable to perform such obligation, including, but not limited to, failure of or threat

Deleted: 4

of failure of facilities, flood, earthquake, storm, fire, lightning and other natural catastrophes, epidemic, war, riot, civil disturbance or disobedience, strike, labor dispute, labor or material shortage, sabotage, government priorities and restraint by court order or public authority, and action or non-action by, or failure to obtain the necessary authorizations or approvals from, any governmental agency or authority, which by exercise of due diligence such Party could not reasonably have been expected to avoid and which by exercise of due diligence it shall be unable to overcome. Nothing contained herein shall be construed to require either Party to settle any strike or labor dispute in which it is involved.

21. GILA RIVER BASIN AND LITTLE COLORADO RIVER BASIN WATER RIGHTS ADJUDICATIONS:

21.1 SRP and the Town agree to support each other and take all necessary actions in the Gila River and Little Colorado River General Stream Adjudications to claim and establish their respective rights to the use of water from C. C. Cragin Reservoir in accordance with the terms of this Agreement.

21.2 SRP shall assert and defend the claims and rights to divert water from East Clear Creek for storage in C. C. Cragin Reservoir in the Gila River and Little Colorado River General Stream Adjudications.

21.3 The Town shall assert and defend its claim to the diversion of water from the Delivery Point from C. C. Cragin Reservoir for use within the Town Water Service Area in the Gila River and Little Colorado River General Stream Adjudications

21.4 SRP shall assert and defend its claim to the diversion of water from C. C. Cragin Reservoir for use within the Salt River Reservoir District and for delivery to the Town at the Delivery Point in accordance with the terms of this Agreement.

21.5 Consistent with the terms of this Agreement, neither Party shall object to the claims and water rights of the other Party to store and use water from East Clear Creek and C. C. Cragin Reservoir.

21.6 All of SRP's costs and expenses incurred in asserting and defending the claims as

described in Subparagraph 21.2 and Subparagraph 21.4 shall be included in SRP's O&M Costs.

22. ACCESS TO PREMISES AND FACILITIES:

Each Party grants to the other Party, its employees and agents the right of access to the Party's premises, including, but not limited to the Town's well sites, water storage facilities, and water recovery facilities, rights of way, and easements in Gila and Coconino Counties, at reasonable times agreed to by the Party and after reasonable notice from the requesting Party, for purposes of ascertaining compliance with this Agreement, including the right to test any water measurement system utilized by the Town to gather and report data pursuant to this Agreement. Right of access under this Paragraph 22 shall be in a manner approved by the Authorized Representatives.

23. AUDIT:

23.1 Upon reasonable written notice to the Authorized Representative of the other Party, either Party at its expense shall have the right, at all reasonable times, to review and audit the books, records and documents of the other Party directly pertaining to the billings and water accounting data required to administer this Agreement. Any audit hereunder may be conducted by an employee of or independent accountant or other suitable professional person designated by the auditing Party. The Party being audited agrees to fully cooperate with any such audit. The right to audit shall extend for a period of three (3) years following the date of each payment under this Agreement. The Parties agree to retain all necessary records and documentation during this audit period. The foregoing shall not be construed to permit either Party to conduct a general audit of the other Party's records. Information obtained by either Party's representatives in examining the other Party's applicable records to verify such billings and Water Accounting data shall not be disclosed to third parties without prior written consent of the audited Party, unless such disclosure is in response to compulsory judicial or regulatory process or required by state law including the public records law. The Party required to disclose information to a third party shall give the other

Party written notice of the disclosure as much in advance as possible.

23.2 The audited Party's Authorized Representative shall be notified in writing of any exception taken as a result of an audit and shall respond to such notification within thirty (30) days. Upon resolution of any exception, A) as to payment of any money due, the owing Party shall directly remit the amount of any exception to the other Party within thirty (30) days, with interest calculated in accordance with Subparagraph 18.2.4 and computed from the date of the original billing to the date of payment by the Party owing as a result of the audit; B) as to any water due, the Authorized Representatives shall arrange for the owing Party to return the amount owed as soon as practicable.

Deleted: a penalty determined

24. RESOLUTION OF DISPUTES:

Any dispute under this Agreement shall first be submitted to the Authorized Representatives for resolution. If the matter cannot be resolved by the Authorized Representatives, any Party may submit the matter to the SRP Associate General Manager - Water and the Town Manager of the Town of Payson. If the matter cannot be resolved by the SRP Associate General Manager – Water and the Town Manager of the Town of Payson, any Party may bring suit upon the matter, provided however, that it is expressly agreed that the venue shall only be in the Superior Court of the State of Arizona in and for the County of Maricopa. In the event of any future dispute or action arising under this Agreement, the prevailing Party shall be entitled to recover its reasonable attorneys' fees and costs incurred therein, including expert witness fees.

25. ACTION PENDING RESOLUTION OF DISPUTES:

Pending the resolution of a dispute pursuant to Paragraph 24, the Parties shall make payments and otherwise perform, to the extent legally permissible, in a manner consistent with this Agreement. Amounts paid by a Party pursuant to this Paragraph 25 during the pendency of such dispute shall be subject to refund and adjustment upon a final resolution of any dispute involving an amount due. Upon such final resolution, A) money due shall be billed and remitted in accordance with Paragraph 18, and B) as to any water due, the Authorized Representatives shall arrange for the owing Party to

return the amount owed as soon as practicable.

26. EXHIBITS:

All Exhibits referred to and attached to this Agreement are incorporated herein by this reference.

27. NOTICES:

Unless otherwise agreed by the Authorized Representatives, any notice, demand or request provided for in this Agreement shall be in writing and delivered in person, or sent by registered or certified mail, postage prepaid, to:

1) Salt River Project
c/o Authorized Representative
PO Box 52025
Phoenix, AZ 85072-2025
Reference: SRP/Payson Water Rights Transfer and Water Delivery and Use Agreement

2) Salt River Project
c/o Corporate Secretary
PO Box 52025
Phoenix, AZ 85072-2025
Reference: SRP/Payson Water Rights Transfer and Water Delivery and Use Agreement

Town of Payson
c/o Authorized Representative
303 North Beeline Highway
Payson, AZ 85541
Reference: SRP/Payson Water Rights Transfer and Water Delivery and Use Agreement

28. WAIVER:

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

29. CONFLICT OF INTEREST:

This Agreement is subject to the provisions of A.R.S. § 38-511, the terms of which are incorporated herein by reference.

30. GOVERNING LAW:

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

31 INTERPRETATION:

The Parties hereby acknowledge and agree that each has been given the opportunity to independently review this Agreement with legal counsel, and that this Agreement is the result of negotiations between the Parties. In the event of any ambiguity in or dispute regarding the interpretation of this Agreement, the interpretation shall not be resolved by any rule of interpretation providing for the interpretation against the Party who caused the uncertainty to exist or against the draftsman.

32. HEADINGS:

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

33. ASSOCIATION, SRPAI&PD (DISTRICT) ASSIGNS AND SUCCESSORS:

For purposes of this Agreement, the District or any Assignee or Successor of Association shall be entitled to the rights and benefits and be bound by the obligations of this Agreement the same as Association.

34. ENTIRE AGREEMENT:

The terms, covenants and conditions of this Agreement constitute the entire Agreement between the Parties within the scope of the Agreement set forth in Paragraph 5 and no understandings or obligations not herein expressly set forth shall be binding upon them. This Agreement may not be modified or amended in any manner unless in writing and signed by the Parties.

35. NONSEVERABLE AGREEMENT

If any material provision of this Agreement is determined to be unenforceable in a final, nonappealable order by a court of competent jurisdiction, the entire Agreement shall be deemed

voidable by either Party. In the event of such an order, however, the Parties shall exercise their best efforts, through the use of a dispute resolution process of their choice or, failing that, through the dispute resolution process provided in Paragraph 24, or other process of their choice, to agree on a modification of or replacement for the material unenforceable term or terms to achieve the objectives and preserve the mutual benefits of this Agreement.

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

SALT RIVER VALLEY WATER USERS' ASSOCIATION

Attest and Countersign

_____ By_____
Secretary 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

_____

SALT RIVER PROJECT AGRICULTURAL IMPROVEMENT & POWER DISTRICT

Attest and Countersign

_____ By_____
Secretary President

APPROVED AS TO FORM AND WITHIN THE POWER AND AUTHORITY GRANTED UNDER THE LAWS OF THE STATE OF ARIZONA TO THE SALT RIVER PROJECT AGRICULTURAL IMPROVEMENT & POWER DISTRICT

_____

TOWN OF PAYSON, ARIZONA, a Municipal Corporation,

By_____
Mayor

Deleted: Town Manager

ATTEST:

_____
Town Clerk

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

_____
Town Attorney

WATER RIGHTS TRANSFER AND
WATER DELIVERY AND USE AGREEMENT
AMONG
SALT RIVER VALLEY WATER USERS' ASSOCIATION,
SALT RIVER PROJECT AGRICULTURAL IMPROVEMENT AND POWER DISTRICT,
AND
TOWN OF PAYSON

EXHIBIT 4.11.3

Points of Measurement

Point of Measurement Location

1. Power Plant Tailrace
2. Effluent Recharge Meter
3. Recovery Well No.

To be completed by Authorized Representatives after Agreement execution.

Formatted: Bullets and Numbering

Formatted: Font: Italic

Formatted: Font: Italic

Formatted: Font: Italic

Formatted: Font: Italic

WATER RIGHTS TRANSFER AND
WATER DELIVERY AND USE AGREEMENT
AMONG
SALT RIVER VALLEY WATER USERS' ASSOCIATION,
SALT RIVER PROJECT AGRICULTURAL IMPROVEMENT AND POWER DISTRICT,
AND
TOWN OF PAYSON

EXHIBIT 4.16

Town Water Service Area

WATER RIGHTS TRANSFER AND

WATER DELIVERY AND USE AGREEMENT

AMONG

SALT RIVER VALLEY WATER USERS' ASSOCIATION,

SALT RIVER PROJECT AGRICULTURAL IMPROVEMENT AND POWER DISTRICT,

AND

TOWN OF PAYSON

EXHIBIT 7.1

Severance and Transfer Application

WATER RIGHTS TRANSFER AND
WATER DELIVERY AND USE AGREEMENT
AMONG
SALT RIVER VALLEY WATER USERS' ASSOCIATION,
SALT RIVER PROJECT AGRICULTURAL IMPROVEMENT AND POWER DISTRICT,
AND
TOWN OF PAYSON

EXHIBIT 7.4

Town Certificate of Water Right

WATER RIGHTS TRANSFER AND
WATER DELIVERY AND USE AGREEMENT
AMONG
SALT RIVER VALLEY WATER USERS' ASSOCIATION,
SALT RIVER PROJECT AGRICULTURAL IMPROVEMENT AND POWER DISTRICT,
AND
TOWN OF PAYSON

EXHIBIT 12.5

Examples of Cumulative 10-Year Pumping Calculations

Deleted: [Rework examples provided into Agreement format]

WATER RIGHTS TRANSFER AND

WATER DELIVERY AND USE AGREEMENT

AMONG

SALT RIVER VALLEY WATER USERS' ASSOCIATION,

SALT RIVER PROJECT AGRICULTURAL IMPROVEMENT AND POWER DISTRICT,

AND

TOWN OF PAYSON

EXHIBIT 14.1

Validation Criteria for Points of Measurement:

Closed-Pressurized Pipe Configurations

Acceptable Measurement Devices

1. Primary Flow Measurement System: The Flow Measurement System must have the ability to monitor flow rate on a continuous basis and provide a totalized volume that is within the accuracy limits of 2% stated in Paragraph 14. An electromagnetic flow meter system or its equivalent shall be installed at each Point of Measurement for water that is commonly debris laden, as agreed to by the Authorized Representatives.
2. Secondary Field Method: The secondary field method may be portable and must have the ability to monitor flow rate or totalized volume over at least a 10 minute interval. The method should meet the standards of the American Water Works Association for accuracy requirements and testing procedures ("AWWA Standards") and be within the accuracy limits of 5% stated in Paragraph 14.

Flow Measurement System Installation

1. Primary Flow Measurement System: A Flow Measurement System should be installed in a manner to meet the manufacturer's specified criteria for an "optimal" configuration. An optimal configuration is ten (10) straight-unobstructed pipe diameters upstream of the flow meter and five (5) straight-unobstructed pipe diameters downstream of the flow meter. All control valves, access ports, and invasive pipe components shall be installed up or downstream of the optimal configuration. If the site does not allow for an "optimal" configuration, provide documentation from the manufacturer stating the anticipated accuracy with the given pipe configuration. An accurate assessment of the pipe material within the optimal flow measurement system configuration should include the pipe material and class or schedule, measured outside diameter, measured wall thickness and measured inside pipe diameter. This assessment shall be permanently affixed to the outside of the pipe near the flow meter.
2. Secondary Flow Measurement System: A flow meter should be installed in a manner to meet the manufacturer's specified criteria for an "optimal" configuration. As a general rule this is usually ten (10) diameters upstream and five (5) diameters downstream of straight pipe run from the flow meter. If the site does not allow for an "optimal" configuration, provide documentation describing how the secondary method will be used to assess flow rate to meet the accuracy limits of 5% stated in Paragraph 14.

Secondary Flow Measurement Test Frequency

Paragraph 14 requires that a secondary field test occur annually. A secondary test completed at the end of the calendar year would provide benchmark accuracy for the start of the new calendar year. More frequent secondary tests throughout the year would reduce the reconciliation time interval should a secondary test fail to meet the accuracy limits stated in Paragraph 14. The frequency and time during the year for a secondary test is individual to each site and should take into account the annual water use for that site.

Secondary Flow Measurement Verification Procedure

All sites should employ at least one secondary field test during a calendar year. The length of the test must achieve at least the minimum requirement for the AWWA Standard. Testing intervals longer than 10 minutes will produce higher quality secondary measurements.

1. Secondary Field Test ≤ 5 %: Results in compliance with Paragraph 14 for the time interval and volume of water between the current and preceding field tests.
2. 10 % ≥ Secondary Field Test > 5 %: Results in compliance with the AWWA Standard and Out of Compliance with Paragraph 14 of this Agreement for the time interval and volume of water between the current and preceding field tests.
    a. Decide to retest (up to three (3) times within 30 days of failed test). May change the secondary test methodology and/or duration of test
        i. Retest ≤ 5 %: Results in compliance with Paragraph 14 for the time interval and volume of water between the current and preceding field tests.
        ii. Retest > 5 %: Results in out of compliance with Paragraph 14 for the time interval and volume of water between the current and preceding field tests. Follow the Out of Compliance Procedure.
    b. Decide that the flow meter is out of compliance with Paragraph 14 for the time interval and volume of water between the current and preceding field tests. Follow the Out of Compliance Procedure.
3. Secondary Field Test > 10 %: Out of Compliance with the AWWA Standard and Paragraph 14 for the time interval and volume of water between the current and preceding field tests.
    a. Decide to retest [at least two (2) times within seven (7) days of failed test]. May change the secondary test methodology and/or duration of test
        iii. Two (2) retests ≤ 5 %: Compliance with Paragraph 14 for the time interval and volume of water between the current and preceding field tests.
        iv. Retest > 5 %: Out of Compliance with Paragraph 14 for the time interval and volume of water between the current and preceding field tests. Follow the Out of Compliance Procedure.
    b. Decide that the flow meter is Out of Compliance with Paragraph 14 for the time interval and volume of water between the current and preceding field tests. Follow the Out of Compliance Procedure, below.

Out of Compliance Procedure

1. A site that will not permit a secondary field test, or if the Town elects to not perform a secondary field test, will be considered out of compliance with Paragraph 14. An agreement between the Authorized Representatives will identify the implications of being out of compliance and outline a course of action for that site.
2. A site that fails a secondary field test is out of compliance. This site is subject to water accounting reconciliation back to the last acceptable secondary field test.

Approval from Salt River Project

Documentation must be submitted to Salt River Project for approval for all existing and future Points of Measurement or if any changes are made to an existing Point of Measurement.

WATER RIGHTS TRANSFER AND

WATER DELIVERY AND USE AGREEMENT

AMONG

SALT RIVER VALLEY WATER USERS' ASSOCIATION,

SALT RIVER PROJECT AGRICULTURAL IMPROVEMENT AND POWER DISTRICT,

AND

TOWN OF PAYSON

Exhibit 16

Principles of Water Exchange Agreement

- The parties acknowledge that this agreement is being developed to facilitate the Town's use of water from the C. C. Cragin Project.

- The water sources given by each party pursuant to this agreement shall be as follows:

  ⇒ Town: Surface water from the Verde River or Salt River watersheds; CAP water; water recharged within the Salt River Reservoir District and recovered; and surface water from East Clear Creek diverted from C. C. Cragin Reservoir to which the Town is entitled under the partial severance and transfer of water rights associated with CWR No. 3696.0001.[1]

  ⇒ SRP: Surface water from East Clear Creek diverted from C. C. Cragin Reservoir; other water from the Verde River watershed to which SRP holds a vested right.

- The water exchange shall be on a one acre-foot for one acre-foot basis as follows:

  ⇒ For each acre foot SRP gives to the Town at the Delivery Point from C. C. Cragin reservoir (for delivery to the Town Water Service Area) or that the Town diverts from another source within the Verde River watershed to which SRP is entitled, Town will provide SRP with one acre foot of Verde River water, Salt River water, CAP water, C. C. Cragin water, or recovered water (for delivery to SRP shareholders).

  ⇒ For each acre foot the Town gives to SRP (for delivery to SRP shareholders), SRP will provide the Town with one acre foot at the Town Delivery Point, or allow the Town to divert one acre-foot at another location (for delivery to the Town Water Service Area).

  ⇒ The parties shall mutually agree on the type of water and delivery point for water given to SRP.

  ⇒ If the Town wishes to provide recovered water to SRP pursuant to this agreement, such delivery shall be (1) as mutually agreed by the parties, and (2) pursuant to a separate well lease agreement between the parties for the recovery of stored water.

  ⇒ If the Town wishes to provide Verde River water, Salt River water, C.C. Cragin water, or water recovered within the Town Water Service Area to SRP pursuant to this agreement, such delivery shall be subject to river losses, as mutually agreed to by the Authorized Representatives.

---

[1] Recovered water is water pumped from a recovery well pursuant to a recovery well permit.

- The maximum amount of water that can be exchanged pursuant to this agreement in any twelve month period is 1,000 acre feet.

- Water exchanges pursuant to this agreement shall be as mutually agreed by the parties.

- For CAP water the Town gives to SRP pursuant to this agreement, such water shall be delivered to SRP in accordance with the provisions of:

  ⇒ A future agreement executed between the parties for the use of the CAP/SRP Interconnection Facility by the Town or

  ⇒ Other agreement(s) executed between the parties for the transportation and storage of CAP water to underground storage facilities along SRP's water delivery system.

- The parties shall file for and receive a water exchange permit from ADWR prior to exchanging water pursuant to this agreement.

WATER RIGHTS TRANSFER AND

WATER DELIVERY AND USE AGREEMENT

AMONG

SALT RIVER VALLEY WATER USERS' ASSOCIATION,

SALT RIVER PROJECT AGRICULTURAL IMPROVEMENT AND POWER DISTRICT,

AND

TOWN OF PAYSON

Exhibit 18.2.1

Terms and Conditions for Payment of SRP's Capital Costs and Other Costs

Described in Subparagraphs 18.1.1and 18.1.2

Section 1 - Subparagraph 18.1.1

1. In June 2008, SRP shall bill the Town for the amount described in Subparagraph 18.1.1.
2. The Town shall pay SRP the total amount billed by wire transfer or by check prior to August 1, 2008.
3. In the event that this Agreement terminates as provided under Subparagraph 6.2(4), SRP shall reimburse to the Town the total amount paid by the Town to SRP pursuant to this Section. Such reimbursement shall occur within 60 days of the date of termination.

Section 2 – Subparagraph 18.1.2

1. In March 2009, SRP shall bill the Town for the amount described in Subparagraph 18.1.2 provided, however, that the amount shall include: 1) the actual amount expended from May 1, 2008 through February 28, 2009, and 2) the budgeted amount that will be expended from March 1, 2009 through April 30, 2009. Such budgeted amount shall be subject to reconciliation in accordance with Subparagraph 18.2.2.
2. The Town shall pay SRP the amount billed by wire transfer or check prior to August 1, 2009.
3. In the event that this agreement terminates as provided under Subparagraph 6.2(4), SRP shall reimburse to the Town the total amount paid by the Town to SRP pursuant to this Section. Such reimbursement shall occur within 60 days of the date of termination.