

RESOLUTION NO. 2381

A RESOLUTION OF THE MAYOR AND COMMON COUNCIL OF THE TOWN OF PAYSON, ARIZONA, RATIFYING ALL ACTS IN CONNECTION WITH AND APPROVING 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, the prior Mayor and Common Council of the Town of Payson approved the Town's entry into and execution of 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 (the "Agreement"); and

WHEREAS, water is a critical and limited resource in the Town of Payson; and

WHEREAS, the parties to the Agreement may and must now go forward to carry out the terms and purposes of the Agreement; and

WHEREAS, the now existing Mayor and Common Council of the Town of Payson, Arizona, wish to ratify all prior actions taken in connection with, and express their support for, the Agreement and the work products and projects which it represents,

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 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.

Section 2. That the authority of the persons who negotiated the Agreement on behalf of the Town of Payson including, but not limited to, F. Robert Edwards, Colin P. Walker, Frederick C. Carpenter, Debra A. Galbraith, Lauren J. Caster, LaRon Garrett, Samuel I. Streichman, Timothy M. Wright be and is hereby ratified and approved.

Section 3. That all actions heretofore taken by the Town of Payson, its officials and employees in connection with or related to the Agreement be and are hereby ratified and approved. In the event any act heretofore taken by the Town of Payson or by any person affiliated with it is determined to be invalid or unlawful in a final, nonappealable order by a court of competent jurisdiction, all other acts of the Town or by any person affiliated with it shall be deemed to have been and remain valid

Prepared by Town of Payson Legal Department

SIS:drs May 21, 2008 (10:10am)

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and in full force and effect.

Section 4. That Kenny J. Evans, Mayor of the Town of Payson, Debra A. Galbraith, Town Manager, Colin P. Walker, Water Superintendent, Michael Ploughe, Town Hydrogeologist, Lauren J. Caster, Water Counsel, Samuel I. Streichman, Town Attorney, Timothy M. Wright, Deputy Town Attorney, and LaRon Garrett, Town Engineer, or their respective delegates, are hereby authorized and appointed as the negotiating team for the Town of Payson to continue such negotiations and pursuits as may be necessary or appropriate to carry out the terms and purposes of the Agreement and/or the utilization of water from the C. C. Cragin Reservoir, including but not limited to, the seeking and obtaining of necessary permits from the United States Department of Agriculture, U.S. Department of Interior, Tonto National Forest, and the completion of a water rights transfer to the Town of Payson in the C. C. Cragin Reservoir through the Arizona Department of Water Resources.

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 _____

Kenny J. Evans, Mayor

ATTEST:

APPROVED AS TO FORM:

Silvia Smith, Town Clerk

Samuel I. Streichman, 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**

2008 0514 Execution Final

EXHIBIT "A" TO RESOLUTION 2381

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SALT RIVER VALLEY WATER USERS' ASSOCIATION,
SALT RIVER PROJECT AGRICULTURAL IMPROVEMENT AND POWER DISTRICT,
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1 WATER RIGHTS TRANSFER, AND
2 WATER DELIVERY AND USE AGREEMENT
3 AMONG
4 SALT RIVER VALLEY WATER USERS' ASSOCIATION,
5 SALT RIVER PROJECT AGRICULTURAL IMPROVEMENT AND POWER DISTRICT,
6 AND
7 TOWN OF PAYSON
8

9 1. PARTIES:

10 The Parties to this Water Rights Transfer and Water Delivery and Use Agreement (Agreement)
11 entered into this 19th day of May, 2008, are the
12 TOWN OF PAYSON, ARIZONA, ("Town"); and the SALT RIVER VALLEY WATER USERS'
13 ASSOCIATION, an Arizona Corporation ("Association"), and the SALT RIVER PROJECT
14 AGRICULTURAL IMPROVEMENT AND POWER DISTRICT, a political subdivision of the State of
15 Arizona ("District")(the Association and the District are sometimes collectively referred to as "SRP").

16 2. RECITALS:

17 This Agreement is made with regard to the following:

18 2.1 The Association is the agent of the United States of America in the operation of the Salt
19 River Federal Reclamation Project, a federal reclamation project, pursuant to an agreement
20 dated September 6, 1917, and is also the agent for the District in the operation of the federal
21 reclamation project pursuant to an agreement dated March 22, 1937, as amended by
22 agreements dated February 28, 1944, and September 12, 1949. Blue Ridge Reservoir, now
23 known as C. C. Cragin Reservoir, is a component of the Salt River Federal Reclamation
24 Project. The District holds the water right for water stored in and diverted from C. C. Cragin
25 Reservoir under Certificate of Water Right ("CWR") No. 3696.0001.

26 2.2 The Town is a municipal corporation, which distributes water to customers within the Town
27 Water Service Area located in northern Gila County. Currently, the Town relies exclusively
28 on Underground Water to serve its customers. The long-term prospects of developing
29 additional Underground Water by the Town are uncertain and have caused the Town to
30 seek alternative water supplies to serve its customers. Over the years the Town,
31 Association, and District have been in conflict over the Town's plans to develop alternative

1 water supplies.

2 2.3 Under provisions of the Arizona Water Settlements Act of 2004 (Public Law 108-451), up to
3 3,500 acre-feet of water per year may be made available from Blue Ridge Reservoir for
4 municipal and domestic uses in northern Gila County, Arizona without cost to the Salt River
5 Federal Reclamation Project.

6 2.4 In an effort to provide a more reliable water supply for the Town and to eliminate conflict over
7 the current and future use of Underground Water by the Town, the Parties desire to enter
8 into this Agreement.

9 3. AGREEMENT:

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

11 4. DEFINITIONS:

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

14 4.1 Active Conservation Capacity: The capacity of C.C. Cragin Reservoir used to store water
15 on a continuous basis, excluding water stored in the Inactive Capacity. The initial Active
16 Conservation Capacity shall be set at 12,832 acre-feet and shall be adjusted periodically
17 as provided in Subparagraph 8.6.

18 4.2 ADWR: The Arizona Department of Water Resources or its successor agency.

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

21 4.4 C. C. Cragin Project: The water storage reservoir known as C. C. Cragin Reservoir
22 situated in Coconino and Gila Counties, Arizona, consisting generally of C. C. Cragin
23 Dam and all pipelines, tunnels, buildings, hydroelectric generating facilities, and other
24 structures of every kind, transmission, telephone and fiber optic lines, pumps, machinery,
25 tools, and appliances; and all real or personal property, appurtenant to or used, or
26 constructed or otherwise acquired to be used, in connection with C. C. Cragin Reservoir.

1 4.5 Delivery Point: The point along the East Verde River where SRP delivers Payson Stored
2 Water from the C. C. Cragin Project and commonly referred to as the power plant tailrace
3 connection.

4 4.6 Flow Measurement System: A flow measurement system configured to relevant industry
5 standards including a primary water measurement device or method (flow meter, weir, gate,
6 electronic transducer, etc.) and a detection device (float, depth probe, manometer, flow
7 meter, etc.) for the real-time monitoring of water able to 1) indicate a rate of flow for
8 operation purposes, and 2) produce a volume totalization for water accounting purposes.
9 The detection device shall be electronically compatible with SRP requirements for data
10 collection, software, telemetry, and water totalization methods and reporting, unless
11 otherwise agreed by the Authorized Representatives. The Flow Measurement System shall
12 be configured to enable an adequate secondary measurement (field verification) for proof of
13 accuracy as provided for in Exhibit 14.1 of this Agreement.

14 4.7 Inactive Capacity: The capacity of C. C. Cragin Reservoir below the intake of the pump inlet
15 tunnel at C. C. Cragin Reservoir.

16 4.8 Net May 1 Storage: The total amount of water in storage in the Active Conservation
17 Capacity on May 1 of each year.

18 4.9 Operation, Maintenance, and Capital Budget Plan: An annual plan developed by SRP with
19 input from the Town addressing the capital requirements and the operation and
20 maintenance (O&M) activities for the C. C. Cragin Project and the planned budget reflecting
21 SRP's Capital Costs and SRP's O&M Costs associated with the C. C. Cragin Project from
22 May 1 through the following April 30 of each year.

23 4.10 Payson Stored Water: The amount of water stored in C. C. Cragin Reservoir allocated to
24 the Town as determined under Paragraph 8.

25 4.11 Point of Measurement: A point agreed to by the Authorized Representatives where it is
26 required to accurately ascertain the total amount of:

1 4.11.1 Payson Stored Water delivered by SRP to the Town's Delivery Point for delivery
2 to the Town Water Service Area; or

3 4.11.2 Payson Stored Water, effluent, or surface water recharged and/or recovered
4 by the Town.

5 4.11.3 The Points of Measurement, which may be changed by the Authorized
6 Representatives upon mutual agreement, are listed in Exhibit 4.11.3.

7 4.12 Salt River Project (SRP): The Salt River Project Agricultural Improvement and Power
8 District and the Salt River Valley Water Users' Association.

9 4.13 SRP's Capital Costs: All costs incurred by SRP for the acquisition and improvement of land,
10 facilities, equipment, and inventories related to the C. C. Cragin Project, which shall include
11 but not be limited to labor, overhead, materials, supplies, spare parts, equipment purchase
12 and rental, and transportation. Prior to May 1, 2009, all expenses incurred by SRP shall be
13 accrued as SRP's Capital Costs.

14 4.14 SRP's O&M Costs: All costs incurred by SRP for the operation and maintenance of all C. C.
15 Cragin facilities, except for those costs defined as SRP's Capital Costs. Such costs shall
16 include, but not be limited to, costs for the following items: insurance, inspections, permits,
17 taxes, fees, licenses, contract services, legal services, accounting, travel, environmental
18 compliance, repairs, testing, labor, salaries, overhead, materials, supplies, expenses,
19 equipment, vehicles, energy, and fuel.

20 4.15 Town Water Service Area: The area shown on the map attached as Exhibit 4.15 where
21 Underground Water may be withdrawn and used and where Payson Stored Water may be
22 used. The exterior boundary of such area is defined as any land located within the Town's
23 corporate boundary, and shall include the entire Tonto Apache Reservation boundary, and
24 any land owned in fee by the Tonto Apache Tribe or held in trust by the United States for the
25 Tribe and its members. The Town Water Service Area may be amended from time to time

1 by the Authorized Representatives.

2 4.16 Underground Water: Water withdrawn from underground sources by the Town from
3 within the Town Water Service Area, or by any other person or entity from within the
4 Town Water Service Area and provided to the Town, or water withdrawn from
5 underground sources outside of the Town Water Service Area by the Town, including
6 from the Tower Well, or any other person or entity and provided to the Town, for use
7 within the Town Water Service Area. Underground Water does not include the Town's
8 recovery of Payson Stored Water, effluent, or other surface water in accordance with this
9 Agreement.

10 5. SCOPE OF AGREEMENT:

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

- 12 5.1 The partial severance and transfer of water rights associated with CWR No. 3696.0001 from
13 SRP to the Town in amounts not to exceed the parameters described in Subparagraph 7.1.
- 14 5.2 The storage, diversion, and delivery of Payson Stored Water by SRP from C. C. Cragin
15 Reservoir to the Delivery Point.
- 16 5.3 Limitations on the withdrawal and use of Underground Water by the Town and others.

17 6. EFFECTIVE DATE AND TERM OF AGREEMENT:

- 18 6.1 This Agreement shall become effective upon execution by the Parties. Unless terminated
19 pursuant to Subparagraph 6.2, this Agreement shall remain in effect in perpetuity.
- 20 6.2 This Agreement shall terminate upon the occurrence of any of the following: (1) C. C. Cragin
21 Reservoir no longer exists or is permanently disabled from storing water within the Active
22 Conservation Capacity due to any circumstance; (2) the Town is permanently precluded
23 from using any water from C. C. Cragin Reservoir; (3) as provided in Subparagraph 7.6; or
24 (4) ADWR determines, in a final nonappealable order, not to approve the severance and
25 transfer of a portion of CWR No. 3696.0001 to the Town as contemplated in Paragraph 7.
26

1 7. TRANSFER OF WATER RIGHTS; REVERSION

2 7.1 The District shall:

3 7.1.1 Upon execution of this Agreement, assign to the Town that portion of the water
4 right under CWR No. 3696.0001 for use within the Town Water Service Area so
5 as to yield at the Town's Delivery Point, an amount not to exceed three
6 thousand five hundred (3,500) acre-feet per calendar year, and three thousand
7 (3,000) acre-feet average per calendar year.

8 7.1.2 When mutually agreed to by the Parties, file with ADWR an application to sever
9 and transfer the assigned portion of water right under CWR No. 3696.0001 to
10 the Town for municipal uses within the Town Water Service Area. The
11 assignment, as provided for in Subparagraph 7.1.1, and the severance and
12 transfer application shall become Exhibit 7.1. For purposes of this Agreement,
13 "municipal uses" shall mean all beneficial uses of water, including for recharge,
14 other than the use of water for application to two or more acres of land to
15 produce plants or parts of plants for sale or human consumption, or for use as
16 feed for livestock, range livestock or poultry, as such terms are defined in
17 A.R.S. § 3-1201. The amount of water available to the Town each calendar
18 year pursuant to the certificate of water right referenced in Subparagraph 7.4
19 shall be determined pursuant to Paragraph 8.

20 7.2 It is expressly understood by the Parties that the portion of the water right assigned in
21 Subparagraph 7.1.1 is limited to a right to divert and use water from C. C. Cragin Reservoir
22 and that no storage right is granted to the Town. Subject to Subparagraph 8.4, SRP shall
23 not take any action to impair the Town's ability to exercise the water right assigned in
24 Subparagraph 7.1.1, provided that the severance and transfer contemplated in
25 Subparagraph 7.1.2 is approved by ADWR.

26 7.3 SRP shall pay, and the Town shall reimburse SRP, for all application, notice, publication,

1 and other fees and expenses, including legal fees and expenses, associated with ADWR's
2 water right severance and transfer administrative process for the application referenced in
3 Subparagraph 7.1.2.

4 7.4 SRP and the Town shall jointly cooperate and support the severance and transfer
5 application through ADWR's administrative process.

6 7.5 The certificate of water right, when issued to the Town by ADWR, shall become Exhibit 7.5
7 of this Agreement.

8 7.6 If, at any time after the effective date of this Agreement, the Town determines that it no
9 longer needs or desires the water rights described in Paragraph 7, the Town shall
10 immediately assign such water rights to SRP, at no cost to SRP, and this Agreement shall
11 thereafter terminate. Provided, however, that if a certificate of water right has been issued to
12 the Town, SRP and the Town shall jointly cooperate and support a subsequent application
13 for severance and transfer of the water rights to SRP under ADWR's administrative process.

14 7.7 In the event this Agreement is terminated pursuant to Subparagraph 6.2, the Town shall
15 immediately reassign the water right assigned to it pursuant to Subparagraph 7.1.1.
16 Provided, however, that if a certificate of water right has been issued to the Town, SRP and
17 the Town shall jointly cooperate and support a subsequent application for severance and
18 transfer of the water rights to SRP under ADWR's administrative process.

19 8. PAYSON STORED WATER

20 8.1 On May 1 of each year, SRP shall calculate the amount of Payson Stored Water to be
21 credited to the Town for diversion and use within the Town Water Service Area from May 1
22 of that year through April 30 of the following calendar year as the sum of: (1) twenty seven
23 and two-tenths percent (27.2%) of Net May 1 Storage, plus (2) twenty seven and two-tenths
24 percent (27.2%) of the amount of water diverted from C. C. Cragin Reservoir during the
25 period from January 1 through April 30 of that year by SRP for its own use. Provided,
26 however, that the sum of (1) and (2) shall not exceed the lesser of either twenty seven and

1 two-tenths percent (27.2%) of the Active Conservation Capacity, or an amount of water that
2 would produce an average of three thousand (3,000) acre-feet for the calendar years from
3 the date that SRP commences water deliveries to the Town. The maximum diversion rate
4 by the Town from the Delivery Point shall not exceed the rate as determined by the
5 Authorized Representatives and memorialized in writing

6 8.2 Payson Stored Water credits shall not be subject to daily evaporation and seepage losses
7 occurring at C. C. Cragin Reservoir or transmission losses for Payson Stored Water
8 transported from C. C. Cragin Reservoir to the Town's Delivery Point.

9 8.3 Payson Stored Water credits remaining in the Payson Stored Water account at 11:59 p.m.
10 on April 30 of each year shall not be carried forward and the credits in the Payson Stored
11 Water account, as prescribed in Paragraph 15, shall be set to zero at that time. In the event
12 that the Town diverts water in excess of the available Payson Stored Water credits in any
13 twelve (12)-month period, such excess shall be debited against the Payson Stored Water
14 credits made available to the Town on the next May 1.

15 8.4 Payson Stored Water credits shall be subject to reduction as provided in this Subparagraph
16 if any agency of the state or federal government, or other entity with requisite jurisdiction,
17 requests or requires SRP to release water from C. C. Cragin Dam to: (1) preserve the
18 structural safety of C. C. Cragin Dam, (2) mitigate environmental impacts of the C. C. Cragin
19 Project, (3) satisfy senior downstream water rights, or (4) preserve the structural safety of C.
20 C. Cragin Dam if a reasonable person would determine independently of such a request or
21 requirement that it is necessary or prudent to release water from C. C. Cragin Dam. In the
22 event that SRP releases water from C. C. Cragin Reservoir pursuant to this Subparagraph
23 8.4, Payson Stored Water credits shall be reduced by twenty seven and two-tenths percent
24 (27.2%) of the amount of water released, up to the amount of any remaining Payson Stored
25 Water credits in its account at the time such releases are made.

26 8.5 If SRP releases water from C. C. Cragin Dam pursuant to Subparagraph 8.4, SRP shall

1 make reasonable efforts to notify the Town prior to making such releases of water from C. C.
2 Cragin Dam, provided that nothing in this Subparagraph 8.5 shall be deemed or construed
3 to in any manner limit SRP's ability to make such releases.

4 8.6 The Parties acknowledge that sedimentation will reduce the water storage capacity at C. C.
5 Cragin Reservoir. In coordination with the Town and in conjunction with the Operation,
6 Maintenance and Capital Budget Plan, SRP may plan and conduct periodic sediment
7 surveys to determine the total water storage capacity and the Active Conservation Capacity
8 of C. C. Cragin Reservoir. Costs for the sediment survey shall be included in SRP's O&M
9 Costs. Beginning on May 1 immediately after completion of the most recent sediment
10 survey, the amount specified in Subparagraph 4.1 shall be adjusted to reflect the Active
11 Conservation Capacity determined in the sediment survey. Such adjusted amount shall be
12 used for purposes of determining the Payson Stored Water amount pursuant to
13 Subparagraph 8.1 until next adjusted.

14 9. DELIVERY AND DISTRIBUTION:

15 9.1 The Town may only deliver and distribute water received from C. C. Cragin Reservoir for use
16 by customers within the Town Water Service Area.

17 9.2 To the extent that there are credits in the Payson Stored Water account, and subject to
18 Paragraph 10, water deliveries by SRP to the Town shall be made upon the Town's request.
19 Requests for delivery by the Town shall be provided to the designated SRP department in
20 conformance with procedures established by SRP.

21 9.3 SRP shall be responsible for transporting Payson Stored Water to the Delivery Point; as such
22 point may be revised by the Authorized Representatives. The Town shall have the sole
23 responsibility of transporting Payson Stored Water from the Delivery Point for distribution
24 within the Town Water Service Area.

25 9.4 SRP shall review, modify, and approve any plans for the Town's connection to the Delivery
26 Point to ensure compatibility with the operation and maintenance of the C. C. Cragin Project.

1 The Town shall reimburse SRP for all costs associated with the review, modification,
2 approval, and, once completed, inspection of such connection.

3 9.5 The Town's right to fix or determine the rates or charges imposed by the Town for service
4 from the Town's water system including, without limitation, rates or charges, for the delivery of
5 Payson Stored Water from the C. C. Cragin Project shall not be affected by any provisions of
6 this Agreement and such rates or charges shall be within the sole discretion of the Town.

7 10. INTERRUPTIONS OR REDUCTIONS IN DELIVERY:

8 Water delivered to the Town shall be in accordance with the Town's request pursuant to Paragraph
9 9, except for (1) interruptions or reductions in deliveries due to: (A) water supply or water delivery
10 facility limitations, or (B) uncontrollable forces as defined in Paragraph 20; (2) interruptions or
11 reductions which are reasonably necessary or desirable for the purposes of maintenance, repairs,
12 replacements, installations, investigations and inspections of the C. C. Cragin Project equipment,
13 works, and facilities including, but not limited to, system dry-ups; provided that SRP, except in case
14 of emergency, will give the Town reasonable, advance notice of temporary interruptions or
15 reductions and will attempt to remove the cause thereof with diligence; and (3) interruptions or
16 reductions in deliveries due to the Town's delinquency in the payment of charges billed by SRP as
17 described in Subparagraph 18.2.6.

18 11. WATER QUALITY AND INDEMNITY:

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

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

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

10 12.1 Upon execution of this Agreement, the Town agrees not to: (1) develop any additional wells
11 to withdraw and use Underground Water from current and future land administered by the
12 United States Forest Service, or any successor agency, located outside the Town Water
13 Service Area, and (2) withdraw Underground Water or accept delivery of Underground
14 Water from wells developed by the Town or others on current or future Forest Service land,
15 or any successor agency, located outside the Town Water Service Area.

16 12.2 Upon execution of this Agreement, the Town shall require that, as a condition of annexation
17 of new territory to the Town, all residential, commercial, and industrial developments in the
18 area to be annexed shall connect to the Town's water delivery system and obtain water
19 exclusively from the Town.

20 12.3 Beginning in the calendar year the Town first receives water from SRP pursuant to this
21 Agreement, the Town shall limit the use of Underground Water to two thousand five hundred
22 and twenty (2,520) acre-feet per calendar year, as measured in accordance with
23 Subparagraph 12.4. Nothing in this Agreement shall be construed to prevent the Town from
24 rehabilitating, replacing, or deepening its existing wells so long as the Town's withdrawal and
25 receipt of Underground Water do not exceed 2,520 acre-feet, except as provided in
26 Subparagraph 12.6.

1 12.4 The Town's compliance with Subparagraph 12.3 shall be determined by comparing the
2 rolling, cumulative ten (10)-year total (hereinafter "cumulative total") on a calendar-year
3 basis, as adjusted pursuant to Subparagraph 12.5.1 and Subparagraph 12.5.3, to ten (10)
4 times the amount prescribed in Subparagraph 12.3 (25,200 acre-feet).

5 12.5 Unless otherwise agreed by the Authorized Representatives, if at the end of any calendar
6 year, the cumulative total exceeds 25,200 acre-feet, the Town shall, during the subsequent
7 calendar year, perform one or more of the following:

8 12.5.1 Within the Town Water Service Area, recharge Payson Stored Water, effluent,
9 or other surface water and not recover an amount of water equal to at least the
10 difference between the cumulative total and 25,200 acre-feet. Upon such
11 recharge, the amount of water recharged and not recovered shall be credited
12 against the Town's withdrawal of Underground Water for purposes of
13 Subparagraph 12.5.

14 12.5.2 Reduce the Town pumping of Underground Water in the subsequent calendar
15 year by an amount of water equal to at least the difference between the
16 cumulative total and 25,200 acre-feet.

17 12.5.3 As agreed to by the Authorized Representatives, deliver or cause to be
18 delivered to SRP an amount of water equal to at least the difference between
19 the cumulative total and 25,200 acre-feet. Upon such delivery, the amount of
20 the delivery shall be credited against the Town's withdrawal of Underground
21 Water for purposes of Subparagraph 12.5.

22 12.5.4 Examples of cumulative 10-year pumping calculations are shown in Exhibit
23 12.5.

24 12.6 Under emergency conditions, the Town may use Underground Water in excess of the
25 quantity permitted in Subparagraphs 12.3 and 12.4 without triggering the obligations under
26 Subparagraph 12.5. For purposes of this subparagraph, "emergency conditions" shall mean

1 those periods when Payson Stored Water is not available for delivery to the Town and its
2 customers, or is available in such reduced quantities that the Town is unable to supply the
3 municipal use demands within the limitations established by Subparagraphs 12.3 and 12.4,
4 but only after utilizing all Payson Stored Water physically available to the Town. When the
5 Town determines that such emergency conditions exist or are imminent, the Town shall
6 request a meeting of the Authorized Representatives at which the Town shall explain why it
7 concludes that emergency conditions exist or are imminent, and how long the Town
8 anticipates those conditions will persist, if a reasonable basis for making that projection
9 exists. The Authorized Representatives shall cooperate in good faith in agreeing that such
10 emergency conditions do or do not exist, or are or are not imminent.

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

12 13.1 Except as otherwise provided in Paragraph 12.5.1, Payson Stored Water may be recharged
13 and recovered by the Town.

14 13.2 Payson Stored Water recharged by the Town pursuant to Subparagraph 13.1 shall be
15 withdrawn from within the area of impact as such term is defined and used under Arizona
16 Revised Statutes, Chapter 3.1, Article 1.

17 13.3 The recharge and recovery of Payson Stored Water or other water shall be performed in
18 accordance with any and all applicable hydrologic reports, facility operational reports, and
19 Arizona Department of Environmental Quality aquifer protection permits or other permits
20 issued for the facility by any state or federal regulatory agency, if any.

21 **14. FLOW MEASUREMENT:**

22 14.1 The Town shall, at its sole expense and with the approval of the Authorized
23 Representatives, construct, install, and maintain a Flow Measurement System at each Point
24 of Measurement in accordance with manufacturers' specifications for the specific application
25 and Exhibit 14.1. At all Town Points of Measurement, the Town shall maintain the accuracy
26 of the associated Flow Measurement System as close to zero error as practical but in no

1 event shall a uniform distribution of accumulated error deviate from actual volume by more
2 than:

3 14.1.1. plus or minus five percent (5%) at the flow (rate) indicating device, unless
4 otherwise agreed by the Authorized Representatives, and

5 14.1.2. plus or minus two percent (2%) of the annual totalized volume, unless otherwise
6 agreed by the Authorized Representatives.

7 14.2 The Town shall prepare and regularly implement testing and recalibration procedures for the
8 Flow Measurement Systems, which procedures must be approved by the Authorized
9 Representatives. At least once every six (6) months at the Town's Delivery Point, and at
10 least once every twelve (12) months at all other Points of Measurement, unless otherwise
11 agreed by the Authorized Representatives, the Town shall recalibrate its Flow Measurement
12 Systems as close to zero error as practical, but in no event shall error exceed the accuracy
13 standard in Subparagraph 14.1. The Town shall orally or in writing notify SRP's Authorized
14 Representative of when such recalibration is planned so that SRP may observe the
15 procedure. SRP may at reasonable times, at its sole expense and after reasonable notice to
16 the Town, test or have tested the Flow Measurement System to determine its accuracy.
17 Such test shall be performed in accordance with industry standards and shall not interfere
18 with the operation of the Town's water system. Annual secondary flow verification tests shall
19 be performed in accordance with the procedures in Exhibit 14.1 (Validation Criteria for
20 Points of Measurement: Closed-Pressurized Pipe Configurations) of this Agreement.

21 14.3 In the event that water accounting records or any routine or special test of the Flow
22 Measurement System discloses an annual volume, or a flow measurement error, that
23 exceeds the limits provided in Subparagraph 14.1, all bills and water accounting affected by
24 such limits having been exceeded may be adjusted by SRP based on the best available
25 data, subject to Subparagraph 18.2 and Paragraph 24. Adjustments shall not encompass
26 more than the elapsed time since the last preceding test.

1 14.4 The annual amount of Underground Water withdrawn by the Town and received by the
2 Town from others shall be measured in accordance with industry standards and reported to
3 SRP in accordance with Paragraph 15.3. In accordance with Paragraph 22, SRP may test
4 any water measurement system utilized to record and report the withdrawal of Underground
5 Water. Such test shall be performed in accordance with industry standards and shall not
6 interfere with the operation of the Town's water system. In the event that any water
7 measurement system fails to meet industry standards for accuracy, the Authorized
8 Representatives shall confer to develop a course of action to remedy such failure and to
9 adjust the water accounting records of SRP and the Town within a reasonable period of
10 time.

11 15. WATER ACCOUNTING AND REPORTING:

12 15.1 SRP shall establish a Payson Stored Water account for the Town and shall:

13 15.1.1 Credit the Payson Stored Water account at 12:01 a.m. on May 1 of each year
14 with an amount of water as provided for in Subparagraph 8.1.

15 15.1.2 Debit the Payson Stored Water account with the amount of Payson Stored
16 Water diverted from C. C. Cragin Reservoir and delivered to the Town's
17 Delivery Point.

18 15.1.3 Extinguish all unused Payson Stored Water credits remaining in the Payson
19 Stored Water account at 11:59 p.m. on April 30 of each year as provided for in
20 Subparagraph 8.3.

21 15.1.4 Debit the Payson Stored Water account at 12:01 a.m. on May 1 of each year
22 with an amount of water that was diverted in excess of the Payson Stored
23 Water credits made available to the Town on the previous May 1.

24 15.1.5 Debit the Payson Stored Water account in accordance with Subparagraph 8.4
25 in the event that water is released from C. C. Cragin Reservoir.

26 15.2 SRP shall maintain a record of the total amount of Payson Stored Water diverted and made

1 available to the Town. The amount of Payson Stored Water for which the Town will be
2 charged and deemed to have received shall be the greater of the actual amount diverted by
3 the Town at the Delivery Point or the amount ordered by the Town and delivered by SRP to
4 the Delivery Point.

5 15.3 Town shall report to SRP each month:

6 15.3.1 The amount of Payson Stored Water, effluent, or other surface water delivered
7 to recharge facilities, the amount of evaporation charged to the water delivered
8 to the facility, the amount of water recharged, and the amount of water
9 recovered. The rate of evaporation charged shall be determined by mutual
10 agreement of the Authorized Representatives.

11 15.3.2 The amount of Underground Water used pursuant to Subparagraphs 12.3 and
12 12.4.

13 15.3.3 The amount of Underground Water, in excess of that utilized pursuant to
14 Subparagraphs 12.3 and 12.4, that is used pursuant to Subparagraph 12.6.

15 15.4 The Town shall report the amount of water pursuant to Subparagraph 15.3 for each month
16 on or before the eighth (8th) business day of the following month to the SRP department
17 designated by SRP.

18 15.5 SRP shall report the amounts prescribed in this Paragraph 15 and the associated water
19 accounting to the Town on a monthly basis by the end of the month following the month for
20 which the accounting was performed. Such report shall include a year-to-date accounting
21 summary on a month-end basis.

22 16. FUTURE WATER EXCHANGES

23 If the Town acquires other water supplies that it cannot use directly, but could do so by a lawful
24 exchange for SRP's water from the C. C. Cragin Project, the Parties agree to develop a water
25 exchange agreement in accordance with the principles set forth in Exhibit 16. If the Town
26 identifies another water supply in the Verde River Watershed to which SRP holds a vested right

1 and the Town wishes to utilize that source in exchange for its share of water from the C. C.

2 Cragin Project, the Parties agree to use their best efforts to develop a water exchange agreement
3 in accordance with the principles set forth in Exhibit 16.

4 17. OPERATION, MAINTENANCE, AND CAPITAL BUDGET PLAN:

5 17.1 SRP shall prepare an Operation, Maintenance, and Capital Budget Plan (Plan) prior to each
6 SRP fiscal year (currently May through April). Such Plan shall include, at a minimum, a
7 description and schedule of the projected operation and maintenance activities, the budget
8 level cost estimates of such activities, the budget level cost estimate of any capital
9 improvements and acquisitions, and the projected water delivery schedule for each Party for
10 each month of the Plan. The budget level cost estimates shall be increased by ten percent
11 (10%) for contingencies. Development of the Plan shall be accomplished in the following
12 manner, provided however, that the dates referenced in Subparagraphs 17.1.1 through
13 17.1.4 may be adjusted by mutual agreement of the Authorized Representatives:

14 17.1.1 On or before November 1 of each year, SRP shall provide to the Town a non-
15 binding runoff and water storage forecast and SRP's projected delivery
16 schedule for water from C. C. Cragin Reservoir to the East Verde River for the
17 succeeding May 1 through April 30 time period.

18 17.1.2 On or before December 1 of each year, Town shall submit to SRP the projected
19 water orders for Payson Stored Water on a monthly basis for the succeeding
20 calendar year.

21 17.1.3 On or before February 1 of each year, SRP shall submit the proposed Plan to
22 the Town, together with any revision to the runoff and water storage forecast
23 and delivery schedule as provided for in Subsection 17.1.1.

24 17.1.4 On or before March 1 of each year, SRP shall confer with the Town on the
25 proposed Plan, and thereafter finalize the Plan prior to April 1 of that year.

26 17.2 Upon the written request by either Party, the Plan may be modified to accommodate

1 operations, maintenance, and capital construction activities not anticipated prior to the
2 adoption of the initial Plan. Within a reasonable period of time, the Authorized
3 Representatives shall consult and SRP shall adopt a revised Plan. Such revised Plan shall
4 remain in effect until the next revised Plan becomes effective.

5 18. BILLING AND PAYMENT OF CHARGES; ADJUSTMENTS:

6 18.1 Town shall pay SRP the following:

7 18.1.1 Twenty seven and two-tenths percent (27.2%) of SRP's Capital Costs accrued
8 to the C. C. Cragin Project from the date it was acquired by the District through
9 April 30, 2008.

10 18.1.2 Twenty seven and two-tenths percent (27.2%) of SRP's Capital Costs budgeted
11 for expense from May 1, 2008 through April 30, 2009.

12 18.1.3 Beginning on May 1, 2009, twenty seven and two-tenths percent (27.2%) of
13 SRP's Capital Costs and twenty seven and two-tenths percent (27.2%) of
14 SRP's O&M Costs budgeted pursuant to the Plan developed each year
15 pursuant to Paragraph 17 of this Agreement; provided, however, that the
16 energy portion of SRP's O&M Costs to divert and deliver water solely from
17 the C. C. Cragin Reservoir to the Town Delivery Point shall be excluded.

18 18.1.4 The energy portion of SRP's O&M Costs, calculated on a per acre-foot basis,
19 to divert and deliver water solely from the C. C. Cragin Reservoir to the Town
20 Delivery Point.

21 18.1.5 Fees and charges specified in Subparagraphs 7.3 and 9.4 of this Agreement
22 and a one-time, set-up fee not to exceed \$23,000 associated with the costs
23 incurred by SRP to establish accounting programs and procedures in
24 accordance with Paragraph 15.

25 18.1.6 Beginning in the calendar year that the Town first receives water from SRP
26 pursuant to this Agreement, an annual administration fee of \$5,440, as such

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

16 18.2 SRP shall bill the charges described in Subparagraph 18.1 to the Town, including any
17 adjustments to previous charges, in accordance with the following:

18 18.2.1 SRP shall bill the Town and the Town shall pay SRP the costs as set forth in
19 Subparagraphs 18.1.1 and 18.1.2 of this Agreement, in accordance with the
20 terms and conditions set forth in Exhibit 18.2.1.

21 18.2.2 SRP shall bill the Town the costs as set forth in Subparagraphs 18.1.3 and
22 18.1.4 by no later than June 30 of each year and the Town shall pay SRP
23 monthly, in twelve (12) equal installments beginning in July, on or before the
24 last day of each month (or if such day is not a business day, on the next
25 succeeding business day). The bill shall include a reconciliation of SRP's
26 Capital Costs and SRP's O&M Costs so that such budgeted costs paid by

1 the Town do not exceed the Town's share of SRP's Capital Costs and SRP's
2 O&M Costs as those costs are defined in Subparagraphs 4.13 and 4.14.

3 18.2.3 To the extent that the costs as set forth in Subparagraph 18.1.5 are known
4 and the fee as set forth in Subparagraph 18.1.6 becomes effective, SRP
5 shall bill the Town by no later than June 30 of each year and the Town shall
6 pay SRP on or before the last day of July (or if such day is not a business day,
7 on the next succeeding business day).

8 18.2.4 The Town shall pay SRP in good funds as provided for in this Subparagraph
9 18.2. Bills which are not paid by the dates as prescribed in Subparagraphs
10 18.2.1 (and Exhibit 18.2.1), 18.2.2, and 18.2.3 shall be delinquent and thereafter
11 accrue an interest charge equal to the prime rate of interest as established by
12 the Bank of America on the last business day of the month following the month
13 for which the bill was submitted, plus two percent (2%) per annum, prorated by
14 days, of the unpaid principal, computed daily until payment is received. Any
15 payment received shall first be applied to any interest charges owed, and then
16 to the charges for services rendered.

17 18.2.5 If the Town disputes any portion of any bill, the Town shall pay the disputed
18 amount under protest when due and include with its payment a written
19 statement indicating the basis for the protest. The matter shall then be resolved
20 in accordance with Paragraph 24. If the protest is resolved and determined to
21 be in favor of the Town, SRP shall refund to the Town any overpayment plus
22 interest, accrued at the rate applicable pursuant to Subparagraph 18.2.4,
23 prorated by days from the date payment was credited to the Town to the date
24 the refund check is mailed.

25 18.2.6 If the Town does not pay any delinquent amount within thirty (30) days after
26 receipt by the Town of written notice by SRP to the Town of the delinquency,

1 then SRP may use any available legal remedy to collect the delinquent
2 amount. Additionally, SRP may refuse to deliver or discontinue the delivery
3 of water under this Agreement until the delinquent amount is paid in full.

4 19. APPOINTMENT AND DUTIES OF AUTHORIZED REPRESENTATIVES:

5 19.1 SRP and the Town shall each appoint an Authorized Representative and an alternate, to
6 administer the provisions of this Agreement assigned to the Authorized Representatives.
7 The alternate shall act only in the absence of the Authorized Representative. All decisions
8 and agreements of the Authorized Representatives shall be in writing and be signed by both
9 Authorized Representatives.

10 19.2 In addition to any other responsibilities assigned to the Authorized Representatives in this
11 Agreement, the Authorized Representatives:

12 19.2.1 Shall make available for review and comment any operating procedures
13 developed by SRP or the Town to implement or administer the provisions of this
14 Agreement.

15 19.2.2 May amend the Town Water Service Area as shown on the map attached
16 hereto as Exhibit 4.15, pursuant to Subparagraph 4.15.

17 19.2.3 Shall determine the maximum diversion rate by the Town from the Delivery
18 Point pursuant to Subparagraph 8.1.

19 19.2.4 Shall establish and revise the water ordering procedures, pursuant to
20 Subparagraph 9.2.

21 19.2.5 May change the Delivery Point, pursuant to Subparagraph 9.3.

22 19.2.6 Shall confer to determine if emergency conditions do or do not exist, or are or
23 are not imminent, pursuant to Subparagraph 12.6.

24 19.2.7 Shall approve the Town's Flow Measurement Systems, and the construction,
25 installation and maintenance thereof, pursuant to Subparagraph 14.1.

26 19.2.8 Shall approve the Town testing and recalibration procedures for the Town Flow

1 Measurement Systems and any changes in the required frequency of such
2 testing and recalibration, pursuant to Subparagraph 14.2.

3 19.2.9 Shall confer and develop plans to repair or replace water measurement
4 systems for recording and reporting the withdrawal of Underground Water,
5 pursuant to Subparagraph 14.4.

6 19.2.10 Shall confer and mutually agree to a rate of evaporation to be applied at each
7 water recharge facility, pursuant to Subparagraph 15.3.1.

8 19.2.11 Shall confer regarding the Operation, Maintenance, and Capital Budget Plan
9 pursuant to Paragraph 17.

10 19.2.12 Shall agree to a replacement Index, if necessary, pursuant to Subparagraph
11 18.1.6.

12 19.2.13 Shall approve the manner of access to the premises, right of way and
13 easements of a Party when such access is required by the other Party,
14 pursuant to Paragraph 22.

15 19.2.14 Shall arrange for the requesting Party to audit the books, records and
16 documents of the other Party directly pertaining to the billings and water
17 accounting data required to administer this Agreement, pursuant to
18 Subparagraph 23.1.

19 19.2.15 Shall respond to any notification of an exception taken as a result of an audit,
20 pursuant to Subparagraph 23.2.

21 19.2.16 Shall arrange for the owing Party to return water and/or money owed as a result
22 of an audit, pursuant to Subparagraph 12.4 and Subparagraph 23.2, or upon
23 final resolution of a dispute, pursuant to Paragraph 24.

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

25 19.2.18 Shall annually review and confirm the appropriateness of SRP's and the Town's
26 water accounting procedures and procedures for the determination of the

1 quantities of Payson Stored Water and Underground Water in accordance with
2 this Agreement.

3 19.2.19 Shall review and develop procedures to resolve maintenance issues raised by
4 either Party regarding service under this Agreement.

5 19.2.20 Shall meet at least once every three (3) months, unless they otherwise agree,
6 to carry out the duties assigned to them by this Agreement and to discuss
7 additional matters of common concern to SRP and the Town.

8 19.3 If the Authorized Representatives disagree as to any action to be taken or decision to be
9 made, or as to the need for taking any action or making any decision, or as to whether any
10 matter is within the scope of the Authorized Representatives' responsibilities hereunder, the
11 question or questions at issue may be referred to the SRP Associate General Manager -
12 Water and the Town Manager of the Town of Payson. Any issue(s) unresolved by the SRP
13 Associate General Manager - Water and the Town Manager of the Town of Payson may be
14 addressed in a manner consistent with Paragraph 24.

15 19.4 Each Party shall notify the other Party in writing within thirty (30) days after execution of this
16 Agreement of the designation of its Authorized Representative and alternate and shall
17 promptly notify the other Party of any subsequent changes in such designation.

18 19.5 The Authorized Representatives shall have no authority to modify, amend or supplement
19 this Agreement, other than as expressly provided in this Paragraph 19.

20 20. UNCONTROLLABLE FORCES:

21 Neither Party shall be considered in default in the performance of any of its obligations hereunder
22 when a failure of performance shall be due to uncontrollable forces; provided, however, that the
23 Town shall not be excused from paying its then current obligation pursuant to Subparagraph 18.1.3
24 and Subparagraph 18.1.6. The term "uncontrollable forces" shall mean any cause beyond the
25 control of the Party unable to perform such obligation, including, but not limited to, failure of or threat
26 of failure of facilities, flood, earthquake, storm, fire, lightning and other natural catastrophes,

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

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

9 21.1 SRP and the Town agree to support each other and take all necessary actions in the Gila
10 River and Little Colorado River General Stream Adjudications to claim and establish their
11 respective rights to the use of water from C. C. Cragin Reservoir in accordance with the
12 terms of this Agreement.

13 21.2 SRP shall assert and defend the claims and rights to divert water from East Clear Creek for
14 storage in C. C. Cragin Reservoir in the Gila River and Little Colorado River General Stream
15 Adjudications.

16 21.3 The Town shall assert and defend its claim to the diversion of water from the Delivery Point
17 from C. C. Cragin Reservoir for use within the Town Water Service Area in the Gila River
18 and Little Colorado River General Stream Adjudications.

19 21.4 SRP shall assert and defend its claim to the diversion of water from C. C. Cragin Reservoir
20 for use within the Salt River Reservoir District and for delivery to the Town at the Delivery
21 Point in accordance with the terms of this Agreement.

22 21.5 Consistent with the terms of this Agreement, neither Party shall object to the claims and
23 water rights of the other Party to store and use water from East Clear Creek and C. C.
24 Cragin Reservoir.

25 21.6 All of SRP's costs and expenses incurred in asserting and defending the claims as
26 described in Subparagraph 21.2 and Subparagraph 21.4 shall be included in SRP's O&M.

1 Costs.

2 22. ACCESS TO PREMISES AND FACILITIES:

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

10 23. AUDIT:

11 23.1 Upon reasonable written notice to the Authorized Representative of the other Party, either
12 Party at its expense shall have the right, at all reasonable times, to review and audit the
13 books, records and documents of the other Party directly pertaining to the billings and water
14 accounting data required to administer this Agreement. Any audit hereunder may be
15 conducted by an employee of or independent accountant or other suitable professional
16 person designated by the auditing Party. The Party being audited agrees to fully cooperate
17 with any such audit. The right to audit shall extend for a period of three (3) years following
18 the date of each payment under this Agreement. The Parties agree to retain all necessary
19 records and documentation during this audit period. The foregoing shall not be construed to
20 permit either Party to conduct a general audit of the other Party's records. Information
21 obtained by either Party's representatives in examining the other Party's applicable records
22 to verify such billings and Water Accounting data shall not be disclosed to third parties
23 without prior written consent of the audited Party, unless such disclosure is in response to
24 compulsory judicial or regulatory process or required by state law including the public
25 records law. The Party required to disclose information to a third party shall give the other
26 Party written notice of the disclosure as much in advance as possible.

1 23.2 The audited Party's Authorized Representative shall be notified in writing of any exception
2 taken as a result of an audit and shall respond to such notification within thirty (30) days.
3 Upon resolution of any exception, A) as to payment of any money due, the owing Party shall
4 directly remit the amount of any exception to the other Party within thirty (30) days, with
5 interest calculated in accordance with Subparagraph 18.2.4 and computed from the date of
6 the original billing to the date of payment by the Party owing as a result of the audit; B) as to
7 any water due, the Authorized Representatives shall arrange for the owing Party to return
8 the amount owed as soon as practicable.

9 24. RESOLUTION OF DISPUTES:

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

19 25. ACTION PENDING RESOLUTION OF DISPUTES:

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

1 26. EXHIBITS:

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

3 27. NOTICES:

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

7 1) Salt River Project

8 c/o Authorized Representative

9 PO Box 52025

10 Phoenix, AZ 85072-2025

11 Reference: SRP/Payson Water Rights Transfer and Water Delivery and Use Agreement

12
13 2) Salt River Project

14 c/o Corporate Secretary

15 PO Box 52025

16 Phoenix, AZ 85072-2025

17 Reference: SRP/Payson Water Rights Transfer and Water Delivery and Use Agreement

18
19 3) Town of Payson

20 c/o Authorized Representative

21 303 North Beeline Highway

22 Payson, AZ 85541

23 Reference: SRP/Payson Water Rights Transfer and Water Delivery and Use Agreement

24 28. WAIVER:

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

1 29. CONFLICT OF INTEREST:

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

4 30. GOVERNING LAW:

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

6 31. INTERPRETATION:

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

13 32. HEADINGS:

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

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

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

19 34. ENTIRE AGREEMENT:

20 The terms, covenants and conditions of this Agreement constitute the entire Agreement between the
21 Parties within the scope of the Agreement set forth in Paragraph 5 and no understandings or
22 obligations not herein expressly set forth shall be binding upon them. This Agreement may not be
23 modified or amended in any manner unless in writing and signed by the Parties. This Agreement
24 may be executed in two or more counterparts, each of which shall be deemed an original, but all of
25 which together shall constitute one and the same instrument.
26

1 35. NONSEVERABLE AGREEMENT

2 If any material provision of this Agreement is determined to be unenforceable in a final,
3 nonappealable order by a court of competent jurisdiction, the entire Agreement shall be deemed
4 voidable by either Party. In the event of such an order, however, the Parties shall exercise their
5 best efforts, through the use of a dispute resolution process of their choice or, failing that, through
6 the dispute resolution process provided in Paragraph 24, or other process of their choice, to
7 agree on a modification of or replacement for the material unenforceable term or terms to achieve
8 the objectives and preserve the mutual benefits of this Agreement.

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

2 SALT RIVER VALLEY WATER USERS'
3 ASSOCIATION

4
5 Attest and Countersign

6 *Servilio A. Lonon*
7 Secretary

8
9 By *John M. Williams*
10 President

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

16 *Andres J. Barrera*
17 Manager, Litigation and Claims Services

18
19 SALT RIVER PROJECT AGRICULTURAL
20 IMPROVEMENT & POWER DISTRICT

21
22 Attest and Countersign

23 *Servilio A. Lonon*
24 Secretary

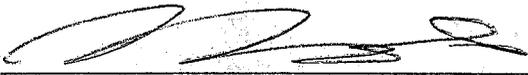
25 By *John M. Williams*
26 President

27 APPROVED AS TO FORM AND WITHIN
28 THE POWER AND AUTHORITY GRANTED
29 UNDER THE LAWS OF THE STATE OF
30 ARIZONA TO THE SALT RIVER PROJECT
31 AGRICULTURAL IMPROVEMENT &
32 POWER DISTRICT

33 *Andres J. Barrera*
34 Manager, Litigation and Claims Services

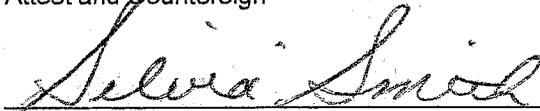
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TOWN OF PAYSON, ARIZONA, a Municipal Corporation,

By 

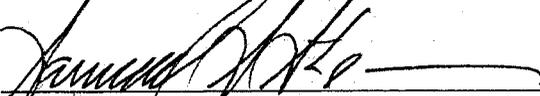
Mayor

Attest and Countersign



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

1 WATER RIGHTS TRANSFER AND
2 WATER DELIVERY AND USE AGREEMENT
3 AMONG
4 SALT RIVER VALLEY WATER USERS' ASSOCIATION,
5 SALT RIVER PROJECT AGRICULTURAL IMPROVEMENT AND POWER DISTRICT,
6 AND
7 TOWN OF PAYSON

8
9 EXHIBIT 4.11.3

10 Points of Measurement

11
12 Point of Measurement

12 Location

- | | |
|-------------------------------|--|
| 13 1. Power Plant Tailrace | Section 23, Township 12 North, Range 10 East |
| 14 2. Effluent Recharge Meter | |
| 15 3. Recovery Well No. | |

16 *To be completed by Authorized Representatives after Agreement execution.*

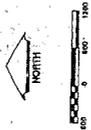
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1 WATER RIGHTS TRANSFER AND
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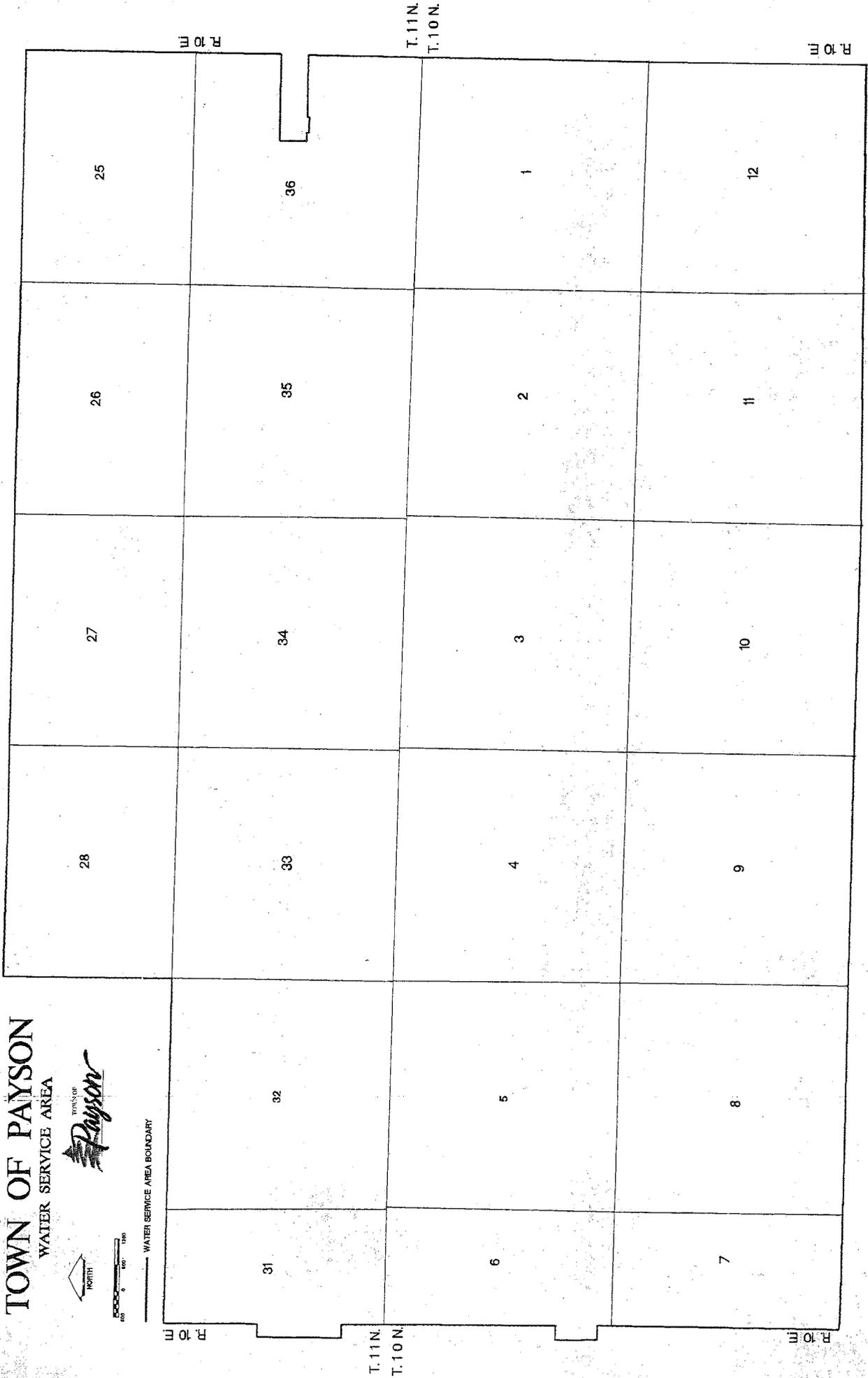
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9 EXHIBIT 4.15

10 Town Water Service Area
11

TOWN OF PAYSON
WATER SERVICE AREA



WATER SERVICE AREA BOUNDARY



1 WATER RIGHTS TRANSFER AND

2 WATER DELIVERY AND USE AGREEMENT

3 AMONG

4 SALT RIVER VALLEY WATER USERS' ASSOCIATION,

5 SALT RIVER PROJECT AGRICULTURAL IMPROVEMENT AND POWER DISTRICT,

6 AND

7 TOWN OF PAYSON

8 EXHIBIT 7.1

9
10 Water Right Assignment and Severance and Transfer Application
11
12

1 WATER RIGHTS TRANSFER AND
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6 AND
7 TOWN OF PAYSON

8
9 EXHIBIT 7.5

10
11 Town Certificate of Water Right
12

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6 AND
7 TOWN OF PAYSON

8
9 EXHIBIT 12.5

10
11 Examples of Cumulative 10-Year Pumping Calculations
12
13

Exhibit 12.5
Examples of Cumulative 10-Year Pumping Calculations

Year Sequence	Year	Groundwater Pumping(1)	10-Year Pumping Maximum of: 20,000	Water Recharged or Delivered to SRP(2)	Adjusted Groundwater Pumping	Adjusted 10-Year Pumping
1	2008	1,800			1,800	
2	2009	1,900			1,900	
3	2010	2,000			2,000	
4	2011	2,100			2,100	
5	2012	1,700			1,700	
6	2013	1,600			1,600	
7	2014	1,000			1,000	
8	2015	2,400			2,400	
9	2016	2,700			2,700	
10	2017	3,000	20,200	0	2,800	20,000
11	2018	1,000	19,200	200	1,000	19,200
12	2019	1,500	18,800		1,500	18,800
13	2020	1,700	18,500		1,700	18,500
14	2021	1,800	18,200		1,800	18,200
15	2022	1,800	18,300		1,800	18,300
16	2023	2,500	19,200		2,500	19,200
17	2024	3,000	21,200		1,800	20,000
18	2025	4,000	21,600	1,200	4,000	21,600
19	2026	1,000	19,900	0	1,000	19,900
20	2027	500	17,600	0	500	17,600
21	2028	4,000	20,600	0	3,400	20,000
22	2029	3,000	21,500	600	3,000	

Narrative:

For illustrative purposes, 2,000 AF is assumed to be the maximum allowable pumping per year. The 10-year pumping total is not computed initially until year 10. If the total is less than the 10-year maximum, then no recharge, delivery to SRP, or reduction in pumping is required. However, if the total is greater than the 10-year maximum, then recharge, delivery to SRP, or reduction in pumping is required in order to reduce the 10-year total to the maximum allowed. The amount required is equal to the amount of pumping which exceeds the maximum allowed during the 10-year period. The 10-year total is then recomputed using the current year's 10-year pumping total less the succeeding year's amount of recharge, delivery to SRP, or reduction in pumping.

In years 2017 and 2018, a combination of reduced pumping and water recharge reduced the 2017 pumping total to 20,000 AF and the 2018 pumping total to 19,200 AF.

In year 2024, water recharge alone in 2025 reduced the 2024 pumping total to 20,000 AF.

In years 2025 and 2026, reduced pumping alone reduced the 2026 pumping total to 19,900 AF.

Notes:

(1) Groundwater pumping is actual amount and may reflect a reduction in pumping pursuant to Subparagraph 12.5.2.

(2) Water recharged or delivered to SRP pursuant to Subparagraphs 12.5.1 and 12.5.3.

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6 AND
7 TOWN OF PAYSON

8 EXHIBIT 14.1
9

10 Validation Criteria for Points of Measurement:

11 Closed-Pressurized Pipe Configurations
12

13 Acceptable Measurement Devices

- 14 1. Primary Flow Measurement System: The Flow Measurement System must have the ability to
15 monitor flow rate on a continuous basis and provide a totalized volume that is within the
16 accuracy limits of 2% stated in Paragraph 14. An electromagnetic flow meter system or its
17 equivalent shall be installed at each Point of Measurement for water that is commonly debris
18 laden, as agreed to by the Authorized Representatives.
- 19 2. Secondary Field Method: The secondary field method may be portable and must have the
20 ability to monitor flow rate or totalized volume over at least a 10 minute interval. The method
21 should meet the standards of the American Water Works Association for accuracy
22 requirements and testing procedures ("AWWA Standards") and be within the accuracy limits
23 of 5% stated in Paragraph 14.
24

25 Flow Measurement System Installation

- 26 1. Primary Flow Measurement System: A Flow Measurement System should be installed in a
27 manner to meet the manufacturer's specified criteria for an "optimal" configuration. An
28 optimal configuration is ten (10) straight-unobstructed pipe diameters upstream of the flow meter
29 and five (5) straight-unobstructed pipe diameters downstream of the flow meter. All control
30 valves, access ports, and invasive pipe components shall be installed up or downstream of the
31 optimal configuration. If the site does not allow for an "optimal" configuration, provide
32 documentation from the manufacturer stating the anticipated accuracy with the given pipe
33 configuration. An accurate assessment of the pipe material within the optimal flow measurement
34 system configuration should include the pipe material and class or schedule, measured outside
35 diameter, measured wall thickness and measured inside pipe diameter. This assessment shall
36 be permanently affixed to the outside of the pipe near the flow meter.
- 37 2. Secondary Flow Measurement System: A flow meter should be installed in a manner to meet
38 the manufacturer's specified criteria for an "optimal" configuration. As a general rule this is
39 usually ten (10) diameters upstream and five (5) diameters downstream of straight pipe run
40 from the flow meter. If the site does not allow for an "optimal" configuration, provide
41 documentation describing how the secondary method will be used to assess flow rate to meet
42 the accuracy limits of 5% stated in Paragraph 14.
43
44
45

1 Secondary Flow Measurement Test Frequency

2 Paragraph 14 requires that a secondary field test occur annually. A secondary test completed at
3 the end of the calendar year would provide benchmark accuracy for the start of the new calendar
4 year. More frequent secondary tests throughout the year would reduce the reconciliation time
5 interval should a secondary test fail to meet the accuracy limits stated in Paragraph 14. The
6 frequency and time during the year for a secondary test is individual to each site and should take
7 into account the annual water use for that site.
8

9 Secondary Flow Measurement Verification Procedure

10 All sites should employ at least one secondary field test during a calendar year. The length of the
11 test must achieve at least the minimum requirement for the AWWA Standard. Testing intervals
12 longer than 10 minutes will produce higher quality secondary measurements.
13

- 14
- 15 1. Secondary Field Test $\leq 5\%$: Results in compliance with Paragraph 14 for the time interval and
16 volume of water between the current and preceding field tests.
 - 17 2. 10% \geq Secondary Field Test $> 5\%$: Results in compliance with the AWWA Standard and Out of
18 Compliance with Paragraph 14 of this Agreement for the time interval and volume of water
19 between the current and preceding field tests.
 - 20 a. Decide to retest (up to three (3) times within 30 days of failed test). May change the
21 secondary test methodology and/or duration of test
 - 22 i. Retest $\leq 5\%$: Results in compliance with Paragraph 14 for the time interval and
23 volume of water between the current and preceding field tests.
 - 24 ii. Retest $> 5\%$: Results in out of compliance with Paragraph 14 for the time interval
25 and volume of water between the current and preceding field tests. Follow the Out of
26 Compliance Procedure.
 - 27 b. Decide that the flow meter is out of compliance with Paragraph 14 for the time interval
28 and volume of water between the current and preceding field tests. Follow the Out of
29 Compliance Procedure.
 - 30 3. Secondary Field Test $> 10\%$: Out of Compliance with the AWWA Standard and Paragraph 14
31 for the time interval and volume of water between the current and preceding field tests.
 - 32 a. Decide to retest [at least two (2) times within seven (7) days of failed test]. May change
33 the secondary test methodology and/or duration of test
 - 34 iii. Two (2) retests $\leq 5\%$: Compliance with Paragraph 14 for the time interval and
35 volume of water between the current and preceding field tests.
 - 36 iv. Retest $> 5\%$: Out of Compliance with Paragraph 14 for the time interval and volume
37 of water between the current and preceding field tests. Follow the Out of Compliance
38 Procedure.
 - 39 b. Decide that the flow meter is Out of Compliance with Paragraph 14 for the time interval
40 and volume of water between the current and preceding field tests. Follow the Out of
41 Compliance Procedure, below.

42 Out of Compliance Procedure

- 43
- 44 1. A site that will not permit a secondary field test, or if the Town elects to not perform a secondary
45 field test, will be considered out of compliance with Paragraph 14. An agreement between the
46 Authorized Representatives will identify the implications of being out of compliance and outline a
47 course of action for that site.
 - 48 2. A site that fails a secondary field test is out of compliance. This site is subject to water
49 accounting reconciliation back to the last acceptable secondary field test.

50 Approval from Salt River Project

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