

**CITY OF PEORIA, ARIZONA  
COUNCIL COMMUNICATION**

CC: SC  
Amend No. \_\_\_\_\_

Date Prepared: November 6, 2007

Council Meeting Date: November 20, 2007

TO: Terrence L. Ellis, City Manager

FROM: ~~for~~ Stephen L. Bontrager, Utilities Director

PREPARED BY: Bradley M. Hill, Water Resources Manager

SUBJECT: Approve payment agreement between the City of Peoria and the Central Arizona Water Conservation District (CAWCD) for past Municipal and Industrial (M&I) water service capital charges.

**RECOMMENDATION:**

That Mayor and Council approve the payment agreement for past Central Arizona Project (CAP) M&I water service charges in the amount of \$3,670,364.37 for 5,527 acre feet of Colorado River water supplies to be paid out of account 2169-2229-540000-CIPWR-UT00033.

**SUMMARY:**

Since 1997, the City Attorney's Office and the Utilities Department have been involved with negotiating and finalizing a water rights settlement with the Gila River Indian Community, the United States and numerous other parties within the State of Arizona. The final resolution of these negotiations was included in the Arizona Water Settlements Act that was adopted by the U.S. Congress in 2004. Several components within the Act impacted the City's CAP Colorado River water supplies including the addition of 5,527 acre-feet per year of CAP Municipal and Industrial (M&I) priority water. This agreement provides for the payment to CAWCD the back capital costs associated with this water supply. This is enough renewable surface water for an additional 34,400 citizens and brings the City's total CAP M&I priority water to 25,236 acre-feet per year.

ATTACHMENT: Payment Agreement

**CITY CLERK USE ONLY:**

- Consent Agenda
- Carry Over to Date: \_\_\_\_\_
- Approved
- Unfinished Business (Date heard previous: \_\_\_\_\_)
- New Business

ORD. # \_\_\_\_\_ RES. # \_\_\_\_\_  
LCON# 09207 LIC. # \_\_\_\_\_  
Action Date: \_\_\_\_\_

COPY

**PAYMENT AGREEMENT  
FOR  
PAST M&I WATER SERVICE  
CAPITAL CHARGES  
(LUMP SUM)**

THIS AGREEMENT (Agreement) is made and entered into this \_\_\_ day of \_\_\_\_\_, 2007, by and between Central Arizona Water Conservation District (CAWCD) and the City of Peoria.

**RECITALS**

A. On or about March 27, 1985, the United States of America (United States) acting through the Secretary of the Interior (Secretary), CAWCD and the City of Peoria entered into a subcontract for the delivery of Central Arizona Project (CAP) municipal and industrial (M&I) priority water, titled "Subcontract Among the United States, the Central Arizona Water Conservation District and the City of Peoria, Providing for Water Service, Central Arizona Project", Contract No. 5-07-30-W0081.

B. On August 25, 2006, the Secretary published his final reallocation decision for Central Arizona Project water. That decision reallocated previously uncontracted for CAP M&I priority water to various M&I water providers in accordance with section 104(b) of the Arizona Water Settlements Act of 2004, Pub. L. 108-451, (the Act) and the recommendation of the Arizona Department of Water Resources. In the final reallocation decision, 5,527 acre-feet of additional CAP M&I priority water was allocated to the City of Peoria.

C. In accordance with the Act, the United States and CAWCD have offered the City of Peoria an amended subcontract for CAP M&I priority water, (Amended Subcontract). The Amended Subcontract provides for an annual entitlement of 25,236 AF, which includes City of Peoria's original CAP entitlement in the amount of 19,709 AF/year, and the additional entitlement recently reallocated to the City of Peoria in the amount of 5,527 AF/year (the Additional Entitlement).

D. The Amended Subcontract has been fully executed by the United States, CAWCD and the City of Peoria. Article 4.2 of the Amended Subcontract provides that it does not become effective until three conditions have been satisfied:

- 1) The Amended Subcontract is validated by a court of competent jurisdiction, as described in A.R.S. sections 48-3731 through 48-3734;
- 2) The Secretary publishes in the Federal Register the statement of findings described in Section 207(c)(1) of the Arizona Water Settlements Act, 118 Stat. 3478; and
- 3) City of Peoria pays or provides for payment of past M&I water service capital charges associated with the Additional Entitlement.

E. CAWCD has given City of Peoria the option of paying the past M&I water service capital charges associated with the Additional Entitlement in one lump sum by December 1, 2007 (Payment Option 1) or on a five-year levelized payment plan with the first installment due December 1, 2007 (Payment Option 2).

F. City of Peoria has elected Payment Option 1.

G. The Parties desire to make arrangements for the timely payment of past M&I water service capital charges associated with the Additional Entitlement. The Parties also desire to provide for the refund of any such payments in the event that the Secretary does not publish a statement of findings under section 207(c)(1) of the Act by December 31, 2007, as set forth in Section 207(c)(2) of the Act, or such other date as that Section 207(c)(2) is amended to state.

#### **AGREEMENT**

1. City of Peoria agrees to pay the past M&I water service capital charges associated with the Additional Entitlement in the amount of \$3,670,364.37 to CAWCD.
2. On or before October 25, 2007, CAWCD shall submit a written invoice to the City of Peoria for past M&I water service capital charges associated with the Additional Entitlement in the amount of \$3,670,364.37.
3. On or before December 1, 2007, City of Peoria shall pay CAWCD the past M&I water service charges as invoiced by CAWCD.
4. If the City of Peoria is in arrears in the payment of the past M&I water service capital charges under this Agreement, City of Peoria shall have no right to delivery of the

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Additional Entitlement until such payment is made, plus any applicable late charges pursuant to Paragraph 5 below.

5. City of Peoria shall pay a late payment charge on payments that are received after the due date. The late payment charge percentage rate calculated by the Department of the Treasury and published quarterly in the Federal Register shall be used; provided, that the late payment charge percentage rate shall not be less than 0.5 percent per month. The late payment charge percentage rate applied on an overdue payment shall remain in effect until payment is received. The late payment rate for a 30-day period shall be determined on the day immediately following the due date and shall be applied to the overdue payment for any portion of the 30-day period of delinquency. In the case of partial late payments, the amount received shall first be applied to the late charge on the overdue payment and then to the overdue payment.
6. If the Secretary does not publish a statement of findings under section 207(c)(1) of the Act by December 31, 2007, as necessitated by Section 207(c)(2) of the Act, or by such other date established by that Section 207(c)(2) of the Act under a future amendment, then CAWCD shall refund the past M&I water service capital charges paid by City of Peoria, with interest accrued at the prevailing local government investment pool rate, to City of Peoria on or before sixty days after such date.
7. Governing Law, Forum. This Agreement shall be governed by the law of Arizona. The forum selected for any proceeding or suit in law or equity arising from or incident to this Agreement shall be Maricopa County, Arizona.
8. Integration. All rights and obligations of the parties shall be governed by the terms of this Agreement. This Agreement contains all the terms and conditions agreed upon by the parties. No other understandings, oral or otherwise, regarding the subject matter of this Agreement shall be construed as consent to any suit or waiver of any defense in a suit brought against the other party in any state or federal court.
9. Conflicts of Interest. All parties hereto acknowledge that this Agreement is subject to cancellation by either party, without penalty, pursuant to the provisions of A.R.S. § 38-511.
10. Waiver; Severability. The parties agree that a waiver of any provision of this Agreement shall not act as a waiver of any other provision of this Agreement. If a

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provision of this Agreement is for any reason declared invalid, illegal or unenforceable, that declaration shall not affect the remaining provisions of this Agreement.

IN WITNESS WHEREOF, this Agreement is executed by the Parties hereto.

**CENTRAL ARIZONA WATER  
CONSERVATION DISTRICT**

By: \_\_\_\_\_  
Sid Wilson, General Manager

**CITY OF PEORIA**

By: \_\_\_\_\_

Attest: \_\_\_\_\_

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