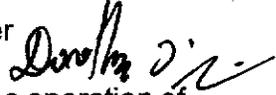


**CITY OF PEORIA, ARIZONA
COUNCIL COMMUNICATION**

CC: 4C
Amend No. _____

Date Prepared March 27, 2008

Council Meeting Date April 15, 2008

TO: Terrence L. Ellis, City Manager
FROM: Stephen L. Bontrager, Utilities Director 
PREPARED BY: Dorothy O'Brien, Acting Water Resources Manager 
SUBJECT: Approve Amendment 1 of the Intergovernmental Agreement for the operation of the New River and Agua Fria Underground Storage Facility.

RECOMMENDATION:

That the Mayor and City Council approve Amendment 1 of the New River and Agua Fria Underground Storage Facility Intergovernmental Agreement (IGA) which adds the City of Peoria as a party, lists its entitlement, and makes other minor modifications.

SUMMARY:

The City of Peoria adopted resolution 05-207 (LCON 11905) on October 27, 2005. This resolution indicated the City's intent to purchase twenty percent capacity in the New River and Agua Fria Underground Storage Facility (NAUSF) operated by the Salt River Valley Water Users Association. The NAUSF will recharge the effluent from the Butler Water Reclamation Facility.

The Office of the City Attorney was involved in the drafting of the NAUSF IGA. The NAUSF IGA Amendment 1 proposes the following:

- ⊗ Modifies the IGA to include the City of Peoria as a party and stating its twenty percent entitlement in the NAUSP.
- ⊗ Authorizes the NAUSP Operating Committee (in which the Utilities Department staff is a member) to approve decreases or increases in certain cost factors as needed to reflect operating experience.
- ⊗ Agrees to an adjusted annual administrative cost of \$2,425.41.
- ⊗ Makes amendments to the term language and explains the allocations of operating costs to each participant and the leasing revenue.
- ⊗ Agrees that all amendments to terms within the IGA must be approved by all parties in writing.

Attachments: The Amendment 1 of the New River and Agua Fria Underground Storage Facility Intergovernmental Agreement and LCON11905.

CITY CLERK USE ONLY:

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

ORD. # _____ RES. # _____
LCON# 11905A LIC. # _____
Action Date: _____

**AMENDMENT NO. 1
TO INTERGOVERNMENTAL AGREEMENT
NEW RIVER AND AGUA FRIA UNDERSTORAGE PROJECT**

This Amendment No. 1 ("Amendment") dated this _____ day of _____, 200_ hereby amends the *New River and Agua Fria Underground Storage Project Intergovernmental Agreement Among the Salt River Project Agricultural Improvement and Power District, Salt River Valley Water Users' Association, and the Municipal Corporations of Avondale, Chandler and Glendale* ("IGA") dated August 4, 2004.

RECITALS:

WHEREAS, the New River and Agua Fria Underground Storage Project ("NAUSP") was authorized by this IGA and the parties have been operating this NAUSP for four years; and

WHEREAS, on November 16, 2005, the City of Peoria and Association executed the Agreement Between the City of Peoria and the Salt River Valley Water Users' Association Regarding the Conveyance of New River and Agua Fria River Underground Storage Project Entitlement ("Conveyance Agreement"), and Peoria wants to become a party to the NAUSP IGA and a Participant in the NAUSP pursuant to the NAUSP IGA; and

WHEREAS, the parties agree that certain terms of the IGA should be amended to authorize the NAUSP Operating Committee to approve decreases or increases in certain cost factors as needed to reflect operating experience; and

WHEREAS, the parties to this IGA agree that the annual administrative cost should be adjusted to \$2,425.41; and

WHEREAS, the parties agree that certain other terms of the IGA should be modified to clarify the terms of the IGA; and

WHEREAS, any amendment to the terms of the IGA must be in writing and be approved by all parties.

NOW, THEREFORE, in consideration of the mutual covenants and provisions contained herein and other good and valuable consideration, the parties do hereby agree as follows:

AGREEMENT:

1. Exhibit H. Exhibit H is hereby amended by deleting the title: "*Exhibit H Weighted Entitlement to Revenues Derived from Leasing the Common and Arizona Canal Components of the CSIF and Apportionment of Declared Firm Lease Capacity Revenue*"

and replacing it with the title: *"Exhibit H CSIF Leasing and Declared Firm Lease Capacity Revenue."*

2. Section 1 is hereby deleted in its entirety and replaced with Section 1 as follows:

"1. PARTIES:

The parties to this New River and Agua Fria River Underground Storage Project ("NAUSP") Intergovernmental Agreement, hereinafter "Agreement" are the City of Avondale, hereinafter "Avondale", the City of Chandler, hereinafter called "Chandler", the City of Glendale, hereinafter called "Glendale", and the City of Peoria, hereinafter called "Peoria", each a municipal corporation in the State of Arizona, the Salt River Valley Water Users' Association, hereinafter called "Association", an Arizona corporation, and the Salt River Project Agricultural Improvement and Power District, hereinafter called "District", an agricultural improvement district organized under the laws of the State of Arizona. Hereinafter, the parties to this Agreement may be referred to individually as a "Party" and collectively as the "Parties".

3. Section 2.6 (line 6) is hereby amended by deleted "RIW" and replacing it with "RIE".

4. Section 7.1 is hereby deleted in its entirety and replaced with the following:

"7.1 The Storage Entitlement for each Participant in the NAUSP is set forth in Exhibit C."

5. Subsection 11.2.1 of the IGA is hereby modified by adding the phrase "unless otherwise approved by the Committee" in the last sentence of that subsection, and said sentence shall now read as follows:

"However, unless otherwise approved by the NAUSP Committee, in no event shall the total of such indirect costs described in this paragraph exceed 50% of the direct labor costs, as described in Section 11.1.4."

6. The first sentence of Section 11.8 (sub-section iii) is hereby deleted in its entirety and replaced with the following:

"(iii) a proposed budget for the remainder of the current fiscal year of the Operating Agent (currently May through April), and an

estimated budget for the following fiscal year of the Operating Agent to the NAUSP Committee.”

7. Subsection 12.2.1 is hereby amended by adding the phrase “unless otherwise approved by the Committee” in the last sentence of the subsection, and said sentence shall now read as follows:

“However, unless otherwise approved by the NAUSP Committee, in no event shall the total of such costs described in this paragraph exceed 50% of the direct labor costs, as described in Section 12.1.3.”

8. Section 12.3 (line 2), “January” is hereby deleted and replaced with “March”.

9. Section 13.1 (line 3), the comma after “11.10” is hereby deleted and replaced with a closing parenthesis [“)”].

10. Section 15.8 is hereby deleted in its entirety and replaced by the following Section 15.8:

“Each Participant and lessee shall pay the Operating Agent an annual fee of \$2,425.41 for the administration and accounting related to the implementation of Sections 7 and 15 of this Agreement. The annual fee shall be billed and prorated by month (based on the month of the In-Service Date) for service provided prior to May 2007. Commencing in May 2007, the annual fee shall be adjusted and billed annually for the rate of inflation (or deflation) as measured by the U.S. Department of Commerce’s final estimate of the Implicit Price Deflator for Gross Domestic Product (Deflator). The annual adjustment will be calculated as equal to the annual percent change (calculated to the nearest one-hundredth percent) in the Deflator as of the fourth quarter of the previous year (measured from fourth quarter to fourth quarter). For purposes of the initial annual adjustment, the value of the Deflator for the fourth quarter 2005 shall be the base.”

11. Section 27.1 is hereby amended to add the following notice information for Peoria after Glendale’s notice information:

“City of Peoria
c/o Office of the City Clerk
8401 West Monroe Street
Peoria, Arizona 85345
Reference: NAUSP”

12. Exhibit C is hereby deleted in its entirety and replaced by the attached revised Exhibit C (dated _____).

13. Exhibit G is hereby deleted in its entirety and replaced by the attached revised Exhibit G (dated _____).

14. Exhibit H is hereby deleted in its entirety and replaced by the attached revised Exhibit H (dated _____).

15. Except as modified by this Amendment, all terms of this IGA shall remain in full force and effect.

16. Effective Date. This Amendment shall become effective upon execution by the Parties, and shall remain in effect throughout the term of the NAUSP IGA.

IN WITNESS WHEREOF, the parties have executed this Amendment No. 1 to Intergovernmental Agreement, New River and Agua Fria Understorage Project _____ day of _____, 2008 by the Parties hereto.

CITY OF AVONDALE

By: _____
Mayor

Attest and Countersign:

City Clerk

Approved as to form and within the
Power and Authority granted under
the laws of the State of Arizona to
the City of Avondale

City Attorney

CITY OF CHANDLER

By: _____
Boyd W. Dunn, Mayor

Attest and Countersign:

City Clerk

Approved as to form and within the
Power and Authority granted under
the laws of the State of Arizona to
the City of Chandler

City Attorney

CITY OF GLENDALE

By: _____
Mayor

Attest and Countersign:

City Clerk

Approved as to form and within the
Power and Authority granted under
the laws of the State of Arizona to
the City of Glendale

City Attorney

CITY OF PEORIA

By: _____
Bob Barrett, Mayor

Attest and Countersign:

Mary Jo Kief, City Clerk

Approved as to form and within the
Power and Authority granted under
the laws of the State of Arizona to
the City of Peoria

Stephen M. Kemp, City Attorney

**SALT RIVER PROJECT AGRICULTURAL
IMPROVEMENT AND POWER DISTRICT**

By: _____
President

Attest and Countersign:

Secretary

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 and Power District

**SALT RIVER VALLEY WATER
USERS' ASSOCIATION**

By: _____
President

Attest and Countersign:

Secretary

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

EXHIBIT C

NEW RIVER AND AGUA FRIA RIVER UNDERGROUND STORAGE
PROJECT

STORAGE ENTITLEMENTS

Participant	Storage Entitlement (Percent)
Association	27.20
Avondale	10.00
Chandler	22.80
Glendale	20.00
Peoria	20.00
TOTAL	100.00

Revision Date: _____

EXHIBIT G

PROCEDURE FOR ALLOCATING OPERATING COSTS TO EACH PARTICIPANT

A. Procedure for Participants Storing Water Other Than Reclaimed Water

$PTOC = [(FOC) \times (PSE)] + [(VOC/TAF) \times (PAF)]$, where

PTOC = Participant's Total Operating Cost excluding Reclaimed Water Related Operating Costs for the month

FOC = Total NAUSP Fixed Operating Costs excluding Reclaimed Water Related Operating Costs for the month

PSE = Participant's Storage Entitlement in the NAUSP

VOC = Total NAUSP Variable Operating Costs excluding Reclaimed Water Related Operating Costs for the month

TAF = Total acre feet delivered to the NAUSP for the month, excluding Reclaimed Water deliveries

PAF = Acre feet delivered to the NAUSP for the month for the Participant and its lessees, excluding Reclaimed Water deliveries

B. Procedure for Participants Storing Reclaimed Water (in addition to item A above)

$PRWTOC = (RWTOC/RWTAF) \times (RWPAF)$, where

PRWTOC = Participant's Reclaimed Water Total Operating Costs for the month

RWTOC = Reclaimed Water Total Operating Costs for the month (as determined by the NAUSP Committee)

RWTAF = Total acre feet of Reclaimed Water delivered to NAUSP for the month

RWPAF = Acre feet of Reclaimed Water delivered to NAUSP for the month for the Participant and its lessees

Revision Date: _____

EXHIBIT H

CSIF LEASING AND DECLARED FIRM LEASE CAPACITY REVENUE

I. CSIF LEASING REVENUE

- A. Participants who are also CSIF participants shall lease CSIF capacity in accordance with section 7.3 of the CSIF IGA. For deliveries to NAUSP, section 7.3 of the CSIF IGA allows CSIF participants to lease CSIF capacity to those entities who are (1) non-CSIF participants and (2) not participants of NAUSP.
- B. Unless otherwise directed by the NAUSP Committee, the fee(s) for leasing CSIF capacity (by component) as provided above shall be the amounts calculated pursuant to section 15.3.6 of the CSIF IGA (CSIF firm pooled capacity rates).
- C. Revenues derived from such CSIF leasing to non-participants shall be shared based on the actual amount of CSIF capacity leased (by CSIF component) by each Participant.
- D. The NAUSP Committee may direct the Operating Agent to prepare further documentation on how CSIF capacity is leased, fees calculated, and revenues shared as provided above.
- E. Nothing in the Exhibit H is intended to alter the provisions of the CSIF IGA. As such, if any provision in this exhibit is found to be inconsistent with the CSIF IGA, the CSIF IGA shall govern.

II. DECLARED FIRM LEASE CAPACITY REVENUE

Revenues derived from the leasing of Declared Firm Lease Capacity shall be apportioned to each Participant using the following formula:

$R = [(DFLC/TDFLC) \times (GREV)]$, where:

- R = The Participant's revenue allocation
- DFLC = The available Declared Firm Lease Capacity made available by the Participant
- TDFLC = Total amount of Declared Firm Lease Capacity available
- GREV = Total amount of Declared Firm Lease Capacity revenue to be apportioned to the Participants

Revision Date: _____

6980

**AGREEMENT BETWEEN THE CITY OF PEORIA AND THE SALT RIVER VALLEY
WATER USERS' ASSOCIATION REGARDING THE CONVEYANCE OF NEW RIVER
AND AGUA FRIA UNDERGROUND STORAGE PROJECT STORAGE
ENTITLEMENT**

1 Parties

This Agreement ("Agreement") is between the City of Peoria, an Arizona municipal corporation (hereinafter referred to as "Peoria"), and the Salt River Valley Water Users' Association, an Arizona corporation (hereinafter referred to as "Association")(Peoria and Association hereinafter referred to individually as "Party" or collectively as "Parties").

2 Recitals

- 2.1 The Association is a party to the New River and Agua Fria Underground Storage Project ("NAUSP") Intergovernmental Agreement ("IGA"), which was executed on August 4, 2004, and became effective on August 18, 2004. Under the terms of the NAUSP IGA, the Association is a Participant in the NAUSP, with a current Storage Entitlement equal to 40% of the Storage Capacity in the NAUSP.
- 2.2 Peoria wishes to become a Participant in the NAUSP, with a Storage Entitlement equal to 20% of the Storage Capacity in the NAUSP.
- 2.3 On September 20, 2004, the NAUSP Committee approved the conveyance of 20% of Storage Entitlement from Association to Peoria pursuant to section 30 of the NAUSP IGA.
- 2.4 Contingent on the requirements set forth in this Agreement, Peoria wishes to purchase from Association, and Association agrees to convey (sell) to Peoria, 20% of Storage Entitlement in the NAUSP, which will have the effect of making Peoria a Participant in the NAUSP as provided in the NAUSP IGA.
- 2.5 The NAUSP Committee has recently indicated a need to make technical corrections to the NAUSP IGA, and plans to amend the NAUSP IGA. Peoria, as a Participant of NAUSP and a member of the NAUSP Committee, plans to execute the amended NAUSP IGA that was approved by the NAUSP Committee.

L CON 11905

FINAL/10-10-05
OFFICIAL FILE
SCANNED

3 Agreement

In consideration of the foregoing premises and mutual covenants and agreements, the Parties agree as follows:

4 Definitions

As used in this Agreement, the following terms, when capitalized, shall have the meanings indicated:

- 4.1 **CONSTRUCTION COSTS:** The construction related costs for NAUSP as defined in section 4.5 of the NAUSP IGA.
- 4.2 **NAUSP COMMITTEE:** A committee established pursuant to the NAUSP IGA, which will exercise authority and responsibility expressly delegated to it therein.
- 4.3 **OPERATING COSTS:** The operating related costs for NAUSP as defined in section 4.17 of the NAUSP IGA.
- 4.4 **PARTICIPANT(S):** Any one or more of the parties to the NAUSP IGA which owns Storage Entitlement.
- 4.5 **STORAGE CAPACITY:** The maximum quantity of water, expressed in acre feet ("AF"), that can be physically stored in the NAUSP each calendar year in compliance with the then current underground storage facility ("USF") permit or any successor or additional document authorizing the Participants to store water at the NAUSP.
- 4.6 **STORAGE ENTITLEMENT:** A Participant's individual percentage of ownership in the Storage Capacity of the NAUSP, as set forth in Exhibit C of the NAUSP IGA, as revised pursuant to the NAUSP IGA.
- 4.7 **TOTAL PURCHASE AMOUNT:** The total amount Peoria agrees to pay Association for the purchase of 20% of Storage Entitlement in the NAUSP pursuant to this Agreement, which shall be equal to:
 - 4.7.1 Two Million Three Hundred Seventy-Three Thousand Four Hundred Forty-Six Dollars (\$2,373,446.00); and
 - 4.7.2 Any Construction Costs or Operating Costs the Association incurred between May 17, 2005 and the date Peoria becomes a Participant pursuant to

L CON 11905

Section 6.4.1 below for the Storage Entitlement being conveyed to Peoria pursuant to this Agreement.

5 Agreement Term

- 5.1 This Agreement shall become effective on the date this Agreement is executed by the Parties ("Effective Date").
- 5.2 This Agreement shall remain in effect until the earliest of the following dates:
 - 5.2.1 The date the NAUSP IGA is terminated pursuant to section 5.7 of the NAUSP IGA ("Early Termination Event").
 - 5.2.2 The date indicated on the written notice from Association officially informing Peoria that the conveyance of the Storage Entitlement is final pursuant to Section 6.3 below of this Agreement.
 - 5.2.3 The date indicated on the written notice from Association officially informing Peoria that this Agreement is canceled due to non-payment pursuant to Section 10 of this Agreement.

6 Conveyance Conditions

- 6.1 Within forty-five (45) days following the Effective Date (or other date as agreed by the Parties), Peoria shall provide Association with a certified or cashier's check equal to that portion of the Total Purchase Amount described in Section 4.7.1 above from a financial institution located within and duly licensed by the state of Arizona (or other payment method agreed to by the Parties).
- 6.2 Within forty-five (45) days of receiving the Total Purchase Amount portion described in Section 6.1 above, Association shall provide Peoria with written confirmation that such payment has been received, and that Peoria has the legal status of an NAUSP Participant.

L CON 11905

6.3 Following the date on which Peoria is deemed to be a Participant pursuant to Section 6.4.1 below, Association shall notify Peoria in writing as soon as possible of that portion of the Total Purchase Amount that is due pursuant to Section 4.7.2 above. Peoria shall then have forty-five (45) days to pay Association such amount in a manner that is consistent with the payment requirements set forth in Section 6.1 above. Upon receipt of such payment, Association shall provide Peoria with written confirmation that payment in full has been received, and that the conveyance of the Storage Entitlement as described in this Agreement is final.

6.4 Peoria acknowledges the following:

6.4.1 As of the date indicated on the written confirmation received from the Association pursuant to Section 6.2 above, except as provided in Section 10 below, Peoria shall thereafter be considered a Participant in the NAUSP, and be bound by all of the terms and conditions of the NAUSP IGA like all other Participants.

6.4.2 Association shall retain all rights and privileges associated with water stored in NAUSP by Association prior to the date Peoria becomes a Participant in the NAUSP.

7 Governing Law

This Agreement shall be governed by the laws of the state of Arizona.

8 Binding Obligations

All of the obligations set forth in this Agreement shall be binding to any successors or assigns of the Parties to this Agreement.

9 Headings

Title and paragraph headings contained in this Agreement are for reference purposes only, and not a part of this Agreement.

10 Cancellation for Non-Payment

10.1 In the event Peoria fails to pay Association the amount due by the due date indicated in Section 6.1 above or Section 6.3 above, Association shall then have the right to cancel this Agreement at any time. If such non-payment occurs, and Association

L CON 11905 *

wishes to cancel this Agreement, Association shall notify Peoria in writing that the conveyance of the Storage Entitlement pursuant to this Agreement is canceled.

10.2 Within forty-five (45) days of sending the cancellation notice to Peoria, Association shall reimburse Peoria for any payments received up until the date this Agreement was canceled pursuant to this Section 10.

10.3 The Parties acknowledge that if this Agreement is canceled pursuant to this Section 10, Peoria will no longer be considered a Participant, and the amount of Storage Entitlement that was conveyed to Peoria pursuant to this Agreement reverts back to the Association.

11 Notices

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:

Salt River Valley Water Users' Association
c/o Manager of Water Engineering and Transmission
1521 N. Project Drive
MS-PAB103
Tempe, AZ 85281

City of Peoria
Office of the City Clerk
8401 W. Monroe Street
Peoria, AZ 85345
(with a copy to Peoria's Utilities Department at the same address)

12 Entire Agreement

The terms and conditions of this Agreement constitute the entire Agreement between the Parties, and with the exception of the NAUSP IGA and anything associated with the NAUSP IGA, no understanding or agreements not expressly provided herein shall be binding upon the Parties. This Agreement may not be amended or modified in any manner unless in writing and signed by the Parties.

L CON 11905

13 Agreement Execution

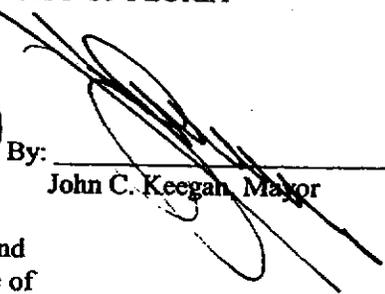
IN WITNESS WHEREOF, this Agreement is executed this 16th day of November, 2005 by the Parties hereto.

CITY OF PEORIA

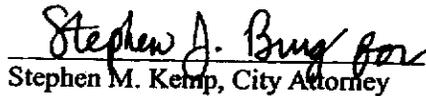
Attest and Countersign:


Mary Jo Kief, City Clerk



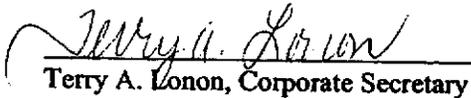
By: 
John C. Keegan, Mayor

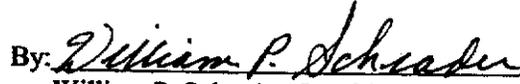
Approved as to form and within the Power and Authority granted under the laws of the State of Arizona to the City of Peoria


Stephen M. Kemp, City Attorney

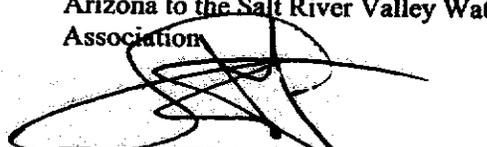
SALT RIVER VALLEY WATER USERS' ASSOCIATION

Attest and Countersign:


Terry A. Lonon, Corporate Secretary

By: 
William P. Schrader, 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


Steve B. Doncaster, Senior Attorney

L CON 11905



WATER ENGINEERING & TRANSMISSION

Mail Station: PAB103
P. O. Box 52025
Phoenix, Arizona 85072-2025
E-mail: pacherri@srpnet.com
(602) 236-2460
Fax (602) 302-9798

SENT VIA CERTIFIED MAIL

PAUL A. CHERRINGTON
MANAGER

December 14, 2005

Office of the City Clerk
City of Peoria
8401 West Monroe Street
Peoria, Arizona 85345

Re: Agreement between City of Peoria and SRP for the Conveyance of New River and Agua Fria River Underground Storage Project (NAUSP) Entitlement: Confirmation of Payment/NAUSP Participant Status

To Whom It May Concern:

Pursuant to section 6.2 of the above referenced agreement (city contract number L-CON-11905; Conveyance Agreement), this letter is to confirm receipt of payment from the City of Peoria. This letter also confirms that, as of the date of this letter, Peoria is legally considered an NAUSP Participant (as such term is defined in the NAUSP Intergovernmental Agreement [IGA]) with an ownership right (Storage Entitlement) of 20%. Therefore, pursuant to section 6.4.1 of the Conveyance Agreement, Peoria is now bound by all of the terms of the NAUSP IGA.

Please note that, as provided in section 6.3 of the Conveyance Agreement, SRP will send to Peoria via separate mailing an invoice for the amount due pursuant to section 4.7.2 of the Conveyance Agreement.

On behalf of SRP and the other NAUSP Participants, congratulations on becoming a Participant in what we feel will be a very important underground water storage project for the entire state.

If you have any questions on this letter, please call me at 602-236-2460.

Sincerely,

Paul A. Cherrington
SRP NAUSP Authorized Representative

PAC/RSS/rss

c: Stephen Bontrager, City of Peoria
Brad Hill, City of Peoria
Deanna Ikeya, City of Peoria
NAUSP Authorized Representatives:

Rob Emmett, City of Avondale
Ken Reedy, City of Glendale
Doug Toy, City of Chandler

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