

**SUBCONTRACT NO. 3 BETWEEN  
THE MOHAVE COUNTY WATER AUTHORITY ("MCWA")  
AND LAKE HAVASU CITY, ARIZONA  
TO FIRM FUTURE SUPPLIES OF COLORADO RIVER WATER**

This Subcontract No. 3 to Firm Future Supplies of Colorado River water is made this \_\_\_ day of \_\_\_\_\_, 2015, by and between the Mohave County Water Authority ("MCWA") and Lake Havasu City, Arizona ("Lake Havasu City") (collectively referred to as the "Parties").

**RECITALS**

1. A Firming Subcontract was entered into between MCWA and Lake Havasu City dated June 24, 2005 and Firming Subcontract No. 2 between MCWA and Lake Havasu City was entered into September 21, 2010; and

2. Since that time, Lake Havasu City has acquired an additional 250 acre-feet of 4<sup>th</sup> priority Colorado River water from MCWA pursuant to Amendment No. 2 to subcontract No. 95-101 dated December 12, 1995 (Amendment No. 2) and wishes to firm those additional supplies; and

3. MCWA and the Arizona Water Banking Authority ("AWBA") entered into an Amended Agreement to Firm Future Supplies ("AWBA Agreement") dated March 17, 2010; and

4. The AWBA Agreement provides for MCWA to enter into Subcontracts for the firming listed in Exhibit "C" with various Colorado River users possessing contracts for M&I water uses with priorities equal to the Central Arizona Project ("CAP") to include their respective shortages in the AWBA Agreement and the 250 acre-feet is part of the 500 acre-feet to MCWA as listed in Exhibit C; and

5. MCWA requires the contracted obligation of those parties wishing to firm their supplies to pay for firming.

For and in consideration of the mutual covenants contained herein, the Parties agree as follows:

**ARTICLE I  
DEFINITIONS**

For the purposes of this Subcontract No. 3, the following terms shall have the meaning defined in this Article. Defined terms are identified by initial letter capitalization.

1.1.1. "ADWR" shall mean the Arizona Department of Water Resources.

1.1.2. "AWBA Agreement" shall mean the Amended Agreement to Firm Future Supplies between MCWA and AWBA dated March 17, 2010.

1.1.3. "AWBA" shall mean Arizona Water Banking Authority.

1.1.4. "CAP" shall mean the Central Arizona Project, as authorized by the Colorado River Basin Project Act, 43 U.S.C. 1501 *et seq.*, and as operated under that certain Master Repayment Contract dated December 1, 1988, Contract No. 14-06-W-245 between CAWCD and the United States Bureau of Reclamation, as amended.

1.1.5. "CAWCD" shall mean the Central Arizona Water Conservation District.

1.1.6. "Effective Date" shall mean the date that this Agreement is fully executed by all parties.

1.1.7. "LTS Credits" shall mean long-term storage credits as defined in A.R.S. § 45-802.01.

1.1.8. "M&I Users" shall mean municipal and industrial users of Colorado River water possessing post-1968 contracts for M&I water uses in the State of Arizona that are outside the service area of CAWCD.

1.1.9. "MCWA's LTS Credit Account" shall mean MCWA's LTS Credit account established with ADWR in connection with the AWBA Agreement, which account shall separately track the firming credits held on behalf of each of MCWA's member agencies who have executed an MCWA Subcontract.

1.1.10. "MCWA's Subaccount" shall mean the subaccount established by AWBA in connection with the AWBA Agreement.

1.1.11. "MCWA Subcontract" or "Subcontract" shall mean this contract between MCWA and Lake Havasu City to have MCWA bear a portion of Lake Havasu City's Shortage(s) in the manner provided for in the AWBA Agreement.

1.1.12. "Prepayment" shall mean the payment by MCWA to AWBA of a portion of the Replacement Costs as set forth in Subarticle 3.2 of the AWBA Agreement.

1.1.13. "Replacement Costs" shall mean the cost to replace the LTS Credits as set forth in Subarticle 3.2 of the AWBA Agreement.

1.1.14. "Shortage" shall mean the shortage declared by the Secretary of the United States Department of the Interior in the Annual Operation Plan for Colorado River reservoirs.

1.1.15. "Subcontractor" shall mean an entity that has entered into a MCWA Subcontract.

## **ARTICLE 2 ACKNOWLEDGMENT**

2.1. Lake Havasu City hereby acknowledges that it has reviewed this Subcontract No. 3 and the AWBA Amended Agreement to Firm Future Supplies and agrees to be bound by their terms.

## **ARTICLE 3 FIRMING**

3.1. For the purposes of the AWBA Agreement and this Subcontract No. 3, MCWA agrees to bear any Shortage(s) for Lake Havasu City in the manner provided for in the agreements, but only to the extent such shortage is covered by the LTS credits for which Lake Havasu City has paid its prepayment as of the time of such shortage declaration.

3.2. MCWA will set aside for use by Lake Havasu City 955 acre-feet of LTS Credits. This number of credits is to firm the 250 acre-feet of water acquired pursuant to Amendment No. 2 to Subcontract 95-101 between MCWA and Lake Havasu City.

3.3. Pursuant to the terms of the AWBA Agreement, the LTS Credits set aside for use by Lake Havasu City may only be used in times of a declared Shortage on the Colorado River and only through the Exchange Agreement between CAWCD and MCWA dated September 27, 2005, as well as Amendments No. 1 and 2 to same dated November 4, 2010 and August 4, 2011 respectively. Lake Havasu City specifically authorizes MCWA to act as its agent in transferring credits pursuant to the exchange agreement.

3.4. The amount of LTS Credits transferred on behalf of Lake Havasu City by MCWA to the MCWA's LTS Credit Account in any given year pursuant to this Subcontract No. 3 shall be no greater than the amount of the Shortage actually borne by Lake Havasu City for that year, and, in no event, shall the sum total exceed the number of acre-feet of LTS credits identified in Subarticle 3.2 herein. Any LTS Credits transferred to MCWA's LTS Credit Account under this Subarticle not utilized pursuant to a water exchange agreement shall be returned to the MCWA Subaccount before March 1 of the following year unless a Shortage has been declared for said year.

3.5. To the extent Lake Havasu City transfers or assigns any of its Colorado River water allocation firmed by this Subcontract No. 3, the proportionate amount of LTS Credits in MCWA's Subaccount shall be transferred or assigned with the allocation provided, however, that such use may (1) only be in Mohave County, Arizona, (2) only be used for municipal and industrial uses, and (3) must be pursuant to a Subcontract between the transferee/assignee and MCWA.

3.6. By May 31 of each year, MCWA shall provide a report to ADWR, AWBA and Lake Havasu City showing: (1) the number of LTS Credits transferred to MCWA's LTS Credit Account in the previous calendar year pursuant to Article 3 of the AWBA Agreement, and (2) the number of LTS Credits returned to the MCWA Subaccount pursuant to Article 3 of the AWBA Agreement. For each reporting requirement specified herein, the report shall specify the number of LTS Credits that apply to each Subcontractor.

## **ARTICLE 4 PAYMENTS**

### **4.1 Reimbursement to MCWA.**

Lake Havasu City specifically agrees to pay to MCWA \$19,100 (Nineteen Thousand One Hundred Dollars) for the prepayment made by MCWA to firm the 250 acre-feet. Payment is due in full no later than December 31, 2024.

### **4.2 Additional Firming Costs.**

Lake Havasu City may order LTS Credits available pursuant to this agreement, subject to the terms of Amended Agreement to Firm Future Supplies between AWBA and MCWA dated March 17, 2010 and the Exchange Agreement between CAWCD and MCWA dated September 27, 2005, as well as Amendments No. 1 and 2 to same dated November 4, 2010 and August 4, 2011 respectively. The terms include but are not limited to payment for the recovery and replacement of any LTS Credits ordered.

## **ARTICLE 5 TERM OF THE SUBCONTRACT**

This Subcontract No. 3 shall be effective when executed by all parties. This Subcontract No. 3 shall terminate when all of the LTS Credits identified in Article 3.1 of this Subcontract No. 3 have been transferred to MCWA's LTS Credit Account or on December 31, 2096, whichever is earlier. Any LTS Credits remaining in MCWA's Subaccount at the termination of this Subcontract No. 3 shall revert to the sole and exclusive benefit of AWBA pursuant to A.R.S. § 45-2457, unless this Subcontract No. 3, and the AWBA Agreement, are extended by all Parties in a written agreement.

## **ARTICLE 6 DELINQUENT CHARGES AND SURETY OF PERFORMANCE**

### **6.1 Delinquency charges under the terms of this Subcontract No. 3.**

6.1.1. The Parties agree that monetary damages will be ineffective in remedying any breach of this Subcontract No. 3, other than nonpayment, and that a court may order specific performance.

6.1.2. All payments due under this Subcontract No. 3 shall be paid promptly on the date required and, if not paid, shall be delinquent. Interest on delinquent payments may be assessed from the business day of the month on which the charge was due and shall accrue at the prime rate of interest as established by the greater of the rate prescribed in the Federal Register by the Department of the Treasury for application to overdue payments, or the interest rate of 0.5% per month described by Section 6 of the Reclamation Project Act of 1939 (Public Law 76-260). The interest charge rate shall be determined as of the due date and remain fixed for the duration of the delinquent period. Any payment received shall first be applied to any interest owed, and then to charges owed.

6.1.3. In the event any portion of the charges are disputed, the disputed amount shall be paid when due, but may be accompanied by a written statement indicating the basis for any dispute. If the dispute is found to be valid, Lake Havasu City shall be refunded any overpayment plus interest, accrued at the rate as set forth in Subarticle 6.1.2, prorated by days from the date payment was credited to MCWA to the date the refund check was issued.

6.1.4. In the event any delinquent amount is not paid by Lake Havasu City within thirty (30) days after receipt by Lake Havasu City of written notice from MCWA of the delinquency, MCWA shall have the right, without liability of any kind, to suspend its performance under this Subcontract No. 3 so long as the delinquent amount remains unpaid. Such suspension shall not affect the LTS Credits remaining in MCWA's LTS Credit Account. Nothing herein shall limit the rights of MCWA to use any other available legal remedy to effect collection of the delinquent amounts.

## **6.2. Surety of performance under the terms of this Subcontract No. 3.**

6.2.1. In the event that a dispute arises over any action to be undertaken pursuant to the terms of this Subcontract No. 3, the Parties recognize and acknowledge that time is of the essence in the conduct of the Parties under the terms of this Subcontract No. 3.

## **ARTICLE 7 OTHER PROVISIONS**

### **7.1 Uncontrollable forces.**

7.1.1. Neither Party shall be considered to be in default in the performance of any of its obligations under this Subcontract No. 3 when a failure to perform shall be due to uncontrollable forces. The term "uncontrollable forces" shall mean any cause beyond the control of the Party unable to perform such obligation, including, but not limited to, failure of or threat of failure of facilities, flood, earthquake, storm, fire, lightning and other natural catastrophes, epidemic, war, riot, civil disturbance or disobedience, strike, labor dispute, labor or material shortage, sabotage,

government priorities other than those of the Parties and restraint by court order or public authority, and action or nonaction by, or failure to obtain the necessary authorizations or approvals from, and government agency or authority, which by exercise of due diligence such Party could not reasonably have been expected to avoid and which by exercise of due diligence it shall be unable to overcome. Nothing contained herein shall be construed to require either Party to settle any strike or labor dispute in which it is involved.

**7.2. Notices.**

7.2.1. Any notice, demand, or request authorized by this Subcontract No. 3 shall be in writing and shall be deemed to have been duly given if mailed, first class postage prepaid, or delivered at the following address:

If to Lake Havasu City:

Lake Havasu City Attorney  
2330 McCulloch Blvd. N.  
Lake Havasu City, AZ 86403

If to MCWA:

Mohave County Water Authority  
c/o Law Offices of Maureen Rose George PC  
2000 McCulloch Blvd. N., Ste. B  
Lake Havasu City, AZ 86403

**7.3. Assignment limited.**

7.3.1. The provisions of this Subcontract No. 3 shall apply to and bind the successors and assigns of the Parties, but no assignment or transfer of this Subcontract No. 3, or any interest therein, shall be valid unless and until approval in writing by the non-assigning Party.

**7.4. No third party beneficiary.**

7.4.1. This Subcontract No. 3 is solely for the benefit of the Parties and does not create, nor shall it be construed to create, rights in any third party unless expressly provided herein. No third party may enforce the terms and conditions of this Subcontract No. 3.

**7.5. Waiver.**

7.5.1. The waiver by either Party of any breach of any term, covenant or condition of this Subcontract No. 3 shall not be deemed a waiver of any other term,

covenant or condition, or any subsequent breach of the same or any other term, covenant or condition of this Subcontract No. 3.

**7.6. Entire agreement.**

7.6.1. The terms, covenants and conditions of this Subcontract No. 3 constitute the entire agreement between the Parties, and no understandings or obligations not expressly set forth in this Subcontract No. 3 shall be binding upon them. This Subcontract No. 3 may not be modified or amended in any manner unless in writing signed by the Parties.

**7.7. Governing law.**

7.7.1. This Subcontract No. 3 shall be governed by and construed in accordance with the laws if the State of Arizona.

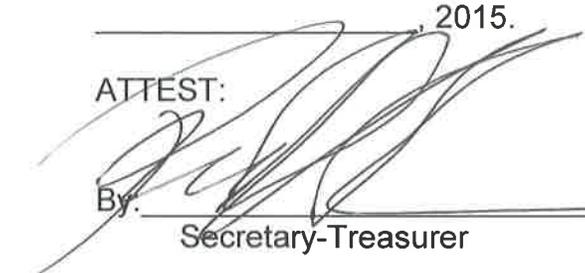
**7.8. Cancellation.**

7.8.1. This Subcontract No. 3 is subject to cancellation in accordance with the provisions of A.R.S. § 38-511.

In witness of this Subcontract No. 3, the Parties affix their original signatures below, acknowledging execution of this document on the \_\_\_ day of \_\_\_\_\_, 2015.

ATTEST:

MOHAVE COUNTY WATER AUTHORITY

By:  \_\_\_\_\_  
Secretary-Treasurer

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

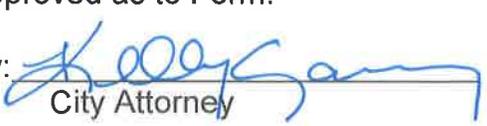
ATTEST:

LAKE HAVASU CITY, ARIZONA

By: \_\_\_\_\_  
City Clerk

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

Approved as to Form:

By:  \_\_\_\_\_  
City Attorney