

T _____ R _____ S _____

**AGREEMENT FOR WATER ENTITLEMENT
(INDUSTRIAL)**

No. _____

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**WATER ENTITLEMENT AGREEMENT
(INDUSTRIAL)**

DATE: _____

No. _____

DEFINED TERMS:

PARTIES:

"District" Mohave Valley Irrigation and Drainage District
1460 Commercial Street
Mohave Valley, Arizona 86440

"Water User" _____

Contact Person: _____
Phone No.: _____

PROPERTY SERVED:

Industrial Use: _____

Legal description: See Exhibit "A"

APN(S): _____

UTILITY PROVIDER: _____

DIVERSION POINT(S): Longitude: _____ Latitude: _____

Longitude: _____ Latitude: _____

WELL SITE NUMBER(S): _____

WATER ENTITLEMENT: _____ acre feet

EFFECTIVE DATE: _____

TERMINATION DATE: _____

REVIEW PERIOD: 5 years

RECITALS:

WHEREAS, DISTRICT, entered into a contract entitled "Contract With Mohave Valley Irrigation and Drainage District for Delivery of Water," Contract No. 14-06-W-204 dated November 14, 1968, hereinafter referred to as the "1968 Contract," with the United States of America, which Contract provides for the storage and delivery of water by the United States to District of not in excess of 51,000 acre feet of Colorado River water per calendar year for irrigation and domestic use within the District;

WHEREAS, in 1978 the United States of America elected to reduce the allocation to District pursuant to Article 10, paragraph (g) by 10,000 acre feet resulting in an annual allocation not in excess of 41,000 acre feet of Colorado River water per calendar year for irrigation and domestic uses with the District;

WHEREAS, the Supreme Court of the United States, in its opinion rendered June 3, 1963, in Arizona v. California, et al., 373 U.S. 546, and its decree entered March 9, 1964, 376 U.S. 340, construed the Boulder Canyon Project Act as requiring that water shall be released from Lake Mead for consumptive use in Arizona, California and Nevada only in accordance with contracts between the United States and persons for the storage and delivery of such waters;

WHEREAS, Water User owns the Property Served as described in Exhibit A and seeks an allocation of water from the District to conduct industrial operations on the property served within the Mohave Valley Irrigation and Drainage District.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the parties hereto agree as follows, to wit:

1. DEFINITIONS.

(a) The Colorado River Compact shall mean the compact for agreement signed at Santa Fe, New Mexico, November 24, 1922, pursuant to an act of Congress approved August 19, 1921, entitled "An Act to Permit a Compact or Agreement between the States of Arizona, California, Colorado, Nevada, New Mexico, Utah and Wyoming, respecting the Disposition and Apportionment of the Waters of the Colorado River, and for other purposes," which compact was approved in Section 13 (a) of the Boulder Canyon Project Act.

(b) The term "domestic" as used in this Agreement shall include water uses defined as domestic in the Colorado River Compact.

(c) The term "industrial" shall mean and refer to those uses falling within Mohave County Zoning Uses C-2, C-2H, C-M, C-MO, E, M-1, M-2 and M-X.

(d) "Regional Director" as used in this Agreement shall mean the regional directors, Lower Colorado Region, Bureau of Reclamation, and shall include the duly appointed successor and authorized representative.

(e) "Water Delivered by District" shall mean water available for diversion by the District directly from the surface or subsurface flow of the river and for water accounting and payment purposes shall include all water pumped by the District or by any other person, firm or corporation, from wells located within or outside the District for use within the District or from wells within the District for use outside the District.

(f) "Water Entitlement" shall mean the amount of water allocated to Water User hereunder;

(g) "Water User" shall mean a user of water within District's exterior boundaries who diverts water directly from the surface flow of the river or who pumps water from wells within or outside the District for use exclusively within District.

(h) "Service Area" shall mean that area which received diverted water or pumped water from wells located within or outside the District for use exclusively within the District, falling within the Property Served.

2. **STORAGE AND SUPPLY OF WATER.** District will make available to Water User a portion of the water supply provided by the 1968 Contract to the District in an amount not to exceed the Water Entitlement per year for industrial uses, a domestic use, as more specifically stated in paragraph 3 for use on the Property Served, and subject to availability of such water for use by District in Arizona under the provisions of the Colorado River Compact, and the Boulder Canyon Project Act and upon the following terms and conditions:

(a) The parties agree all the terms and provisions of the 1968 Contract between the United States, Bureau of Reclamation and District, as amended, shall control and are incorporated herein by this reference.

(b) Water User hereby agrees that the Water Entitlement shall be used in a beneficial manner in compliance with District policies.

(c) Water User hereby agrees to pay to District a reasonable charge for the water entitlement as set forth in District's comprehensive fee schedule, as that schedule may change from time to time. This charge shall include the \$.25 per acre foot charge payable to the Bureau of Reclamation under the 1968 Contract and increases thereto, if any, by Bureau of Reclamation, plus a pro-rata share of all general administrative costs and expenses incurred by the District, including the costs of administering the 1968 Contract, plus the cost of administering this Agreement. District reserves the right to review and adjust this charge annually as part of its comprehensive fee schedule review.

(d) The Water User agrees that it will comply fully with all applicable federal laws, orders and regulations, and the laws of the State of Arizona, all as administered by appropriate authorities, concerning the pollution of streams, reservoirs, ground water or water courses with respect to thermal pollution or the discharge of refuse, garbage, sewage effluent, industrial waste, oil, mine tailings, mineral salts, or other pollutants. No water shall be supplied by District to a Water User in circumstances where the operation of the Water User, or the nature or purpose of use, or the method or place of disposal of such water, contaminates or pollutes the ground water underlying the lands within District or the water in the irrigation or drainage works within District, or the Colorado River, all as determined in any instance by District or the United States of America. If District or the United States of America determines such water contamination or pollution is occurring or has occurred because of any of the circumstances specified above, it shall notify the Water User to correct the situation and to stop said contamination or pollution. If the Water User fails to do so, District may thereupon terminate the supply or delivery of water to said user and shall not reinstate such supply or delivery without the written approval of the United States of America. Any act resulting in contamination or pollution as determined by District or the United States of America may be deemed a breach of this contract entitling District to terminate the contract in accordance with the provisions of Section 12.

(e) Water User shall measure (a) all water delivered to Water User or pumped from well(s) located within its service area or well(s) located outside the service area for use within the District and (b) the quantities of water recovered from drain and water ditches returned to the Colorado River system in measurable

quantities, and shall provide District with monthly reports of said measurements on forms provided by the District, and unless a different period is otherwise provided by the District, on or before the fifth day of each month following delivery or pumping of such water. All of said measuring and controlling devices or automatic gauges, shall be furnished, installed, and maintained in manner satisfactory to the Regional Director and District, by and at the expense of Water User and shall be subject to the inspection of the United States and/or District whose authorized representative shall be allowed access at all times to them. Any deficiencies found therein by the District or United States shall be promptly corrected by and at the expense of Water User.

(f) District is in no way obligated, liable or responsible for ground water levels or the maintenance thereof. In addition, the District does not warrant the quality of water to be furnished pursuant to this contract, and the District is under no obligation to construct or furnish water treatment facilities to maintain or to better the quality of the water.

(g) This contract imposes no obligation whatsoever upon the District for the diversion and transportation of the water to the Water User. The Water User shall install and maintain at Water User's own cost, and in such manner as shall be satisfactory to the District, all turnouts, gates, checks, pumps, pipelines, equipment and appurtenances of whatever nature as are necessary to divert, pump, and transport the water delivered to Water User to the place of use. The diversion and conveyance of such water to the place of use shall be without any expense to or obligation of the District except for its general administrative expenses. The Water User shall, at Water User's own cost and without expense to the District, obtain all necessary rights of way required for any diversion and conveyance of water. The Water User acknowledges that the 1968 contract imposes a limitation upon the District with respect to the capacity of all pumps installed for the diversion of surface water from the Colorado River and that the maximum collective diversion of all Water Users shall not exceed two hundred (200) cubic feet per second in the aggregate.

(h) The Water Entitlement contracted for herein shall only be used on lands within the District included within those more particularly described on Exhibit "A" attached hereto and incorporated herein by this reference. Water User acknowledges that the Water Entitlement is allocated solely for use on said lands and may not be alienated, encumbered or assigned except in conjunction with the said real property or transferred within the District in accordance with the policy of and approval by the District. No portion of any water entitlement may be held independent of the ownership of lands within the District's boundaries.

(i) It is expressly understood and agreed that this Agreement does not constitute a transfer by the District to the Water User of any interest in the 1968

Contract, but is an independent agreement with respect to the delivery of water.

(j) District Resolution No. 92-2 governs the allocation of additional water to lands with Present Perfected Rights. The Water Entitlement contracted for herein shall be used on lands with Present Perfected Rights in accordance with District Resolution No. 92-2, as amended from time to time. Present Perfected Rights, if any, allocated to the lands within the Property Served are identified on Exhibit "A". In the event Water User allocates the Present Perfected Rights to certain portions of Property Served, said allocation shall be consistent with any allocation of Present Perfected Rights made in an agreement between Water User and the United States.

3. **PURPOSE FOR WATER.** Water User represents to District that it will be using the Water Entitlement for industrial purposes. Water User shall not change the purpose or use of the Water Entitlement without first obtaining the approval of District. District reserves the right to impose conditions on any change of purpose or use of the water.

4. **MAINTENANCE AND REPAIR OF DELIVERY SYSTEM.** Water User shall be responsible for the installation and maintenance of its delivery system consistent with District's policies. Water User shall have an affirmative duty to keep said system in good repair and to prevent waste through leakage and breakage.

5. **POINT OF DIVERSION.** The initial Point(s) of Diversion are listed in the preamble (page 3) of this Agreement. Water User has an affirmative duty to accurately and timely inform District of any and all changes in diversion points. Water User shall advise District of any changes in location of diversion points within thirty (30) days of the change and shall obtain in advance such approvals from the District as may be required by Resolution 93-02. Water User further shall file with District evidence of authorization to drill wells obtained by Arizona Department of Water Resources.

6. **WATER NON TRANSFERABLE OUTSIDE DISTRICT'S BOUNDARIES.** No water supplied hereunder for use by Water User shall be sold, exchanged, given to or used by any individual or entity, including any city, town or entity exercising powers of local self-government, whether incorporated or unincorporated, outside the District's exterior boundaries.

7. **WATER DELIVERY IN THE EVENT OF DEFAULT.**

(a) **Refusal to Deliver Water in Case of Default.** District reserves the right to refuse to supply water hereunder in the event of default for a period of more than thirty (30) days in the payment due or to become due to District under this

Agreement. This right of refusal to deliver water shall not be construed as a limitation on the District's right to terminate this Agreement set forth in Section 12.

(b) **Right of Direct Payment to the Department of the Interior.** In the event that District should default in its payment under the 1968 Contract to the United States, Water User shall have the right to make direct payment to the United States and to continue receiving water pursuant to this Agreement if Water User is not otherwise in default with the terms of this Agreement.

8. **RIGHT OF INSPECTION.** District, or its representatives, shall have at all times, and Water User grants District, the right of ingress and egress from all works utilized by Water User or by any other person, firm or corporation for the diversion, processing, storage and distribution of water delivered hereunder for the use by Water User for the purpose of inspection of such works and for all other proper purposes.

9. **RULES AND REGULATIONS.** There is reserved to District the right to prescribe and enforce rules and regulations governing the delivery, diversion and use of water hereunder. Such rules and regulations shall be promulgated, modified, revised or extended from time to time as may be deemed proper, necessary or desirable by District to carry out the true intent and meaning of the applicable laws and of this Agreement and amendments hereto and/or to protect the interest of District. Water User hereby agrees that in the operation and maintenance of the works for the diversion of water for use by Water User and all works appurtenant thereto or otherwise associated therewith, all such rules and regulations will be fully adhered to by Water User.

10. **WAIVER OF CLAIMS.** Water User hereby expressly releases the District, its officers, agents, employees and respective successors and assigns from every claim for damages to persons or property, direct or indirect, and of whatever nature, arising by reason of the diversion, pumping, transportation or use of water delivered hereunder and for damages when suspensions or reductions in delivery of water occur for any reason whatsoever including, but not limited to, an insufficient supply of water, or by hostile diversion, drought, interruption of service occasioned by necessary repairs to any of the works by which water is stored or delivered, or for damages caused by flood, unlawful acts or unavoidable accidents. Any water delivered hereunder will be without treatment of any kind by District and without any warranty whatsoever as to the quality or fitness of such water for the uses or purposes of the Water User. The Water User hereby expressly releases the District, its officers, agents, employees and their respective successors and assigns from any liability or responsibility whatsoever for the quality, composition or contents of any water delivered hereunder, or for any lack of fitness of such water for any use thereof intended by the Water User, either as such water may arrive at the point or points of delivery or at the place or places of use by the Water User, and for the loss of any water delivered

hereunder which may occur between the point or points of delivery and the place or places of use by the Water User.

11. **RESERVATION OF RIGHT TO DISTRICT FOR REDUCTIONS AND CURTAILMENT IN TIMES OF SHORTAGE.** District reserves the right to discontinue or reduce the amount of water to be delivered or allowed to be diverted hereunder whenever such discontinuance or reduction is made necessary for purposes of investigations, inspections, replacements, maintenance or repairs to any works whatsoever affecting, utilizing or in the opinion of District necessary for delivery or diversion of water hereunder. District further reserves the right to impose reductions due to curtailment for shortage conditions declared by the Bureau of Reclamation, it being understood that as far as feasible, District will give reasonable notice in advance of such discontinuance or reduction. For purposes of this Agreement, curtailment for shortage conditions shall mean any percentage or volume of shortage imposed upon the District by the Bureau of Reclamation and shall be imposed upon Water User under this Agreement in the same percentage (or proportionate share of the Water User's Entitlement compared to the volume of shortage curtailment imposed upon the District).

12. **RIGHT OF TERMINATION.** District may terminate this Agreement upon written notice of the breach of any term or condition hereof by Water User and failure by Water User to correct the same after 30 days, in the case of default in the payment of money, and after 60 days, in the case of all other defaults.

13. **INTEREST IN CONTRACT TRANSFERABLE.** It is mutually understood and agreed between the parties hereto that the rights of Water User under the terms of this Agreement shall be transferable by Water User with the written approval of District to any successor in interest to the Exhibit "A" real property. As a condition precedent to any such assignment, the assignee must execute a written agreement to assume, be bound by and perform all provisions required by Water User in this Agreement. Any transfer attempted in violation of the terms of this Article shall be null and void. The District may impose conditions on the transfer of rights under this Agreement consistent with District's policies then in effect.

14. **TERM OF WATER SERVICE.** Subject to the terms, conditions and provisions set forth herein, the policies and procedures of the District, and the contracts affecting District, this Agreement is for a forty (40) year term of service. This Agreement shall expire by its terms at midnight on the 31st day of December of the fortieth (40th) year after the Effective Date and all water allocated to Water User under this Agreement shall return to the District's water inventory for reallocation. District reserves the right to review every five years the amount of water consumed by Water User to ensure the Water Entitlement is subject to beneficial use and make any necessary adjustments, including reductions, in water allocation after notice to the

Water User and opportunity to be heard. District may terminate this Agreement upon written notice if the full development of the Industrial use has not been completed within a period of ten (10) years after the Effective Date.

15. **UNCONTROLLABLE FORCES.** No party shall be considered to be in default in the performance of any of its obligations under this agreement 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, but the party rendered unable to perform shall diligently pursue resolution of its inability to perform.

16. **REMEDIES UNDER CONTRACT NOT EXCLUSIVE.** Nothing contained in this contract shall be construed as in any manner abridging, limiting or depriving the District or the Water User of any means of enforcing any remedy either at law or in equity for the breach of any of the terms, conditions and covenants contained herein. Specifically, but not in limitation thereof, the District retains the right to seek injunctive relief in the event breach by a Water User. Should any legal action or proceeding against the other be commenced for the enforcement of any condition, term or covenant of this contract, the prevailing party shall be entitled to an award for cost of suit and reasonable attorney's fees which shall be awarded by the Court.

17. **EFFECTIVE DATE OF ALLOCATION.** The Effective Date of the Water Entitlement is the date the District approved the allocation at a regular meeting, which date shall be entered by the District in the preamble (page 3) of this Agreement.

18. **EXTENSION.** On or after December 31, 2064, Water User may request an extension of the right to use the Industrial Water Entitlement. Granting of such extension shall be in the sole discretion of the District and subject to the then prevailing water rates established by the District.

T _____ R _____ S _____

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed the day and year first above written.

MOHAVE VALLEY IRRIGATION
AND DRAINAGE DISTRICT

By: _____
By: _____
Its: _____

ATTEST: _____

WATER USER: _____

_____(printed name)

or

_____,
a/an _____

By: _____
By: _____
Its: _____

T____R____S____

EXHIBIT A

Said lands are situated within the County of Mohave, State of Arizona.

See Attached