

Exhibit 11.3
to
The San Carlos Apache Water Rights Settlement Act
of 1992 “Settlement Agreement”

This Exhibit was prepared using paragraphs 4.3 through 6.13 of the Subcontract (subcontract) between the City of Scottsdale, as Subcontractor and the Central Arizona Water Conservation District, as Contractor, as an example.

The provisions have been modified from those in the subcontract as necessary to reflect that the requirements of the Tribal Delivery Contract of December 11, 1980, and the fact that these provisions would be included in leases of CAP water to the Tribe subsequent to the Effective Date of the Settlement.

1.0 Conditions Relating to Delivery and Use.

Delivery and use of water under this lease is conditioned on the following, and the Lessee hereby agrees that:

(a) All uses of Project Water and Return Flow shall be consistent with Arizona water law unless such law is contrary to the Federal law applicable to the Central Arizona Project.

(b) The system or systems through which lease water is conveyed after delivery to the Lessee shall consist of pipelines, canals, distribution systems, or other conduits provided and maintained with linings adequate in the Secretary's judgment to prevent excessive conveyance losses.

(c) The Lessee shall not pump, or within its legal authority, permit others to pump ground water from within the exterior boundaries of the Lessee's service area, which has been delineated on a map filed and approved by the Secretary, for use outside of said service area unless such pumping is permitted under Title 45, Chapter 2, Arizona Revised Statutes, as it may be amended from time to time, and the Secretary and the Lessee shall agree, or shall have previously agreed, that a surplus of ground water exists and drainage is or was required; Provided, however, that such pumping may be approved by the Secretary in consultation with the Lessor, and approval shall not be unreasonably withheld, if such pumping is in accord with the Basin Project Act and upon submittal by the Lessee of a written certification from the Arizona Department of Water Resources or its successor agency that the pumping and transportation of ground water is in accord with Title 45, Chapter 2, Arizona Revised Statutes as it may be amended from time to time, and will not interfere with the delivery of Project to Lessor, its

Lessees or water rights or supply of the Lessor, or the United States on behalf of Lessor.

(d) The Lessee shall not sell otherwise dispose of or permit the sale or other disposition of any Project Water for use outside of its service area; Provided, however, that this does not prohibit exchanges of Project Water covered by separate agreements with the Lessor.

(e) (i) Project Water scheduled for deliver in any Year under this lease maybe used by the Lessee or exchanged by the Lessee pursuant to appropriate agreements approved by the Secretary and the Lessor.

(ii) Project Water scheduled for delivery in any Year under this lease that cannot be used, or exchanged by the Lessee may be made available by the Lessor or the Secretary on behalf of the Lessor to others. If such Project Water is leased to or exchanged with others, the Lessee shall be relieved of its payments hereunder only to the extent of the amount paid to the Lessor by such others, but not to exceed the amount of the Lessee is obligated to pay under this lease for said water.

(iii) In the event the Lessee or the Secretary and the Lessor are unable to lease any portion of the Lessor's Project Water scheduled for delivery ~~and~~ not required by the Lessee, the Lessee shall be relieved of the pumping energy portion of the OM&R charges associated with the undelivered water to the extent Lessor is relieved of such charges as determined by the Secretary.

2.0 Procedure for Ordering Water.

(a) The Lessee shall, within a reasonable period of time as determined by the Lessor,

but not later than August 1, 1999 submit a written schedule to the Lessor, the Secretary and the Operating Agency showing the quantity of water desired by the Lessee during each month of Year beginning January 1, 2000 and the following Year. The Lessor shall notify the Lessee by written notice of the Lessor's action on the requested schedule promptly upon receipt of confirmation from the Secretary or Operating Agency of the availability of the lease water and delivery schedule.

(b) The amounts, times, and rates of delivery of Project Water to the Lessee during each Year subsequent to the Year beginning January 1, 2000 of water delivery shall be in accordance with a water delivery schedule for that Year. Such schedule shall be determined in the following manner:

(i) On or before June 1 of each Year beginning with the Year 2000, the Secretary shall announce the amount of Project Water available for delivery during the following Year in a written notice to the Lessor and Lessee. In arriving at this determination the Secretary, subject to the provisions of the Repayment Contract, shall use his best efforts to maximize the availability and delivery of Arizona's full entitlement of Colorado River and Lessor's allocation of such water over the term of Lessor's contract and any renewal thereof. Within 30 days of receiving said notice, the Lessor shall issue a notice of availability of Project Water to the Lessee.

(ii) On or before August 1 of each Year beginning with the Year 2000, the Lessee shall submit in writing to the Lessor, the Secretary and the Operating Agency a water

delivery schedule indicating the amounts of Project Water desired by the Lessee during each month of the following Year along with a preliminary estimate of Project Water desired for the succeeding two years.

(iii) Upon receipt of the schedule, the Lessor and the Secretary shall review it and, after consultation with the Operating Agency and the Lessee, shall make only such modifications to the schedule as are necessary to ensure that the amounts, times, and rates of delivery to the Lessee are consistent with the delivery capability of the Project, considering, among other things, the availability of water and the delivery schedules of all water having equal or superior CAP priorities, Provided, that this provision shall not be construed to reduce annual deliveries to the Lessee.

(iv) On or before December 1 of each Year beginning with the Year following said initial Year of water delivery, the Lessor in consultation with the Secretary and the Operating Agency shall determine and furnish to the Lessee the water delivery schedule for the following Year which shall show the amount of water to be delivered to the Lessee during each month of that Year, contingent upon the Lessee remaining eligible to receive water under all terms contained herein.

(c) The monthly water delivery schedules may be amended upon the Lessee's written request to the Lessor. Proposed amendments shall be submitted by the Lessee to the Lessor no later than 45 days before the desired change is to become effective, and shall be subject to review and modification in like manner as the schedule. The Lessor shall notify the Lessee and the

Secretary of its action on the Lessee's requested schedule modification within 30 days of the Lessor's receipt of such request.

(d) In no event shall the Secretary or the Lessor be required to deliver to Lessee from the Water Supply System in any one month a total amount of Project Water greater than 11 percent of the Lessee's maximum entitlement: Provided, however, that the Secretary may deliver a greater percentage in any month if such increased delivery is compatible with the overall delivery of Project Water to other subcontractors as determined by the Secretary and the Lessor in consultation with Operating Agency and if the Lessee agrees to accept such increased deliveries.

3.0 Points of Delivery - Measurement and Responsibility for Distribution of Water.

(a) The water to be furnished to the Lessee pursuant to this lease shall be delivered at turnouts to be constructed by the United States at such point(s) on the Water Supply System as may be agreed upon in writing by the Secretary and the Lessor, after consultation with the Operating Agency and Lessee.

(b) Unless the United States and the Lessee agree by contract to the contrary, the Lessee shall construct and install, at its sole cost and expense, connection facilities required to take and convey the water from the turnouts to the Lessee's service area. The Lessee shall furnish, for review by the Operating Agency and approval of the Secretary, drawings showing the construction to be performed by the Lessee within the Water Supply System right-of-way six months before starting said construction. The facilities may be installed, operated, and

maintained on the Water Supply System tight-of-way subject to such reasonable restrictions and regulations as to **type**, location, method of installation, operation, and maintenance as may be prescribed by the Secretary.

(c) All water delivered from the Water Supply System shall be measured with equipment furnished and installed by the United States and operated and maintained by the United States or the Operating Agency. Upon the request of the Lessee, Lessor or the *Secretary*, the accuracy of such measurements shall be investigated by the Secretary, the Operating Agency, Lessor, and Lessee, and any errors which may be mutually determined to have occurred therein shall be adjusted; Provided, that in the event the parties cannot agree on the required adjustment, the Secretary's determination shall be conclusive.

(d) Neither the United States, the Lessor, nor the Operating Agency shall be responsible for the control, carriage, handling, use, disposal, or distribution of Project Water beyond the delivery point(s) agreed to pursuant to Subparagraph 4.5(a). The Lessee shall hold the United States, the Lessor, and the Operating Agency harmless on account of damage or claim of damage of any nature whatsoever for which there is legal responsibility, including property damage, personal injury, or death arising out of or connected with the Lessee's control, carriage, handling use, disposal, or distribution of such water beyond said delivery point(s).

4.0 Temporary Reductions.

In addition to the right of the United States ~~under~~ Subarticle 8. 3(a)(iv) of the Repayment Contract temporarily to discontinue or reduce the amount of water to be delivered, the United

States or the Operating Agency may, ~~after~~ consultation with the Lessor and Lessee, temporarily discontinue or reduce the quantity of water to be furnished to the Lessee as herein provided for the purpose of investigation, inspection, maintenance, repair, or replacement of any of the Project facilities or any part thereof necessary for the furnishing of water to the Lessee, but so far as feasible the United States or the Operating Agency shall coordinate any such discontinuance or reduction with Lessor or Lessee, except in case of emergency, in which case no notice need be given. The United States, its officers, agents, and employees, the Lessor, its officers, agents and employees, and the Operating Agency, its officers, agents, and employees, shall not be liable for damages when, for any reason whatsoever, any such temporary discontinuance or reduction results in deliveries to the Lessee of less water than what has been paid for in advance, the Lessee shall be entitled to be reimbursed for the appropriate proportion of such advance payments prior to the date of the Lessee's next payment of water service charges or the Lessee may be given credit toward the next payment of water charges if the Lessee should so desire.

5.0 Priority in Case of Shortage. The following methods are set forth to govern priority in case of shortage according to the type or types of CAP subject to this lease:

(a) In Time of Shortage, deliveries of Project Water to miscellaneous and non-Indian agricultural uses will have been terminated; available Project Water shall be delivered to Indian contractors (including Contractor) and to non-Indian contractors for municipal and industrial uses according to the following formula:

$$IP = 1/(1 + MI) \text{ where:}$$

- IP is the Indian Share of Project Water;
- I is the Project Water used on Indian lands during the most recent calendar year which was not a Time of Shortage, up to a limit of 309,810 acre feet, less ten (10%) percent of the amount allocated to Indian Contractors for agricultural purposes: provided that, for the purposes of this formula, such ten (10YO) percent reduction shall not operate to reduce the amount of Project Water used for Indian agricultural purposes to less than ninety (90%) percent of the Indian agricultural allocation. (Included in I is any water delivered under a Substitute Water Contract; Provided that, where substitutions occur at a ratio greater than one-to-one, the ratio shall be considered as if it were one-to-one for the purposes of this section.)
- MI is the aggregate Project Water used by Subcontractors for municipal and industrial purposes during the most recent calendar year which was not a ~~Time~~ of Shortage up to a limit of 510,000 acre feet. (Excluded from MI is Project Water obtained under a Substitute Water Contract.)

The non-Indian M&I water supply in Time of Shortage shall be the difference between Project Water and IP.

Subject to the provisions of Section 304(e) of the Basin Project Act, any Project Water furnished to Lessee through Project facilities shall, in the event of shortage thereof, as determined by the Secretary after consultation with the Lessor, be reduced pro rata until exhausted, first for Miscellaneous Water uses and next for Agricultural Water uses before water furnished for non-Indian M&I use is reduced. Thereafter, water for M&I uses shall be reduced pro rata among all M&I users. Pursuant to the authority vested in the Secretary by the Reclamation Act of 1902 (32 Stat. 388), as amended and supplemented, the Basin Project Act, the Regulations for Implementing the Procedures of the U.S. Department of the Interior (516 DM 5.4), the relative priorities between Indian and non-Indian uses will be determined by the Secretary consistent with the allocations published in the Federal Register on March 24, 1983, and the CAP water delivery contract of Lessor dated December 11, 1980, as amended.

(b) Section 2(c) of the Ak-Chin Indian Water Settlement Act, 98 Stat. at 2699, defines “time of shortage” of Colorado River water available to the Central Arizona Project. The definition is applicable to determining the “time of shortage” for the Excess Ak-Chin water available to the Tribe under this Amendment.

6.0 Secretarial Control of Return Flow.

(a) The Secretary reserves the right to capture all Return Flow flowing from the exterior boundaries of the Lessee’s Service Area as a source of supply and for distribution to and use of the Central Arizona Project to the fullest extent practicable- The Secretary also reserves the right to capture for Project use Return Flow which originates or results from water contracted

for from the Central Arizona Project within the boundaries of the Lessee's Service Area if, in his judgment, such Return Flow is not being put to a beneficial use. The Lessee may recapture and reuse its Return Flow; within its Service Area. If Lessee is unable to use the Return Flow within its Service Area, Lessee shall promptly notify Lessor in writing of the availability of Return Flow. Lessor may use such Return Flow on its Reservation, or may lease such Return Flow within Maricopa Pinal, Pima Gila Graham and Greenlee Counties. The Lessee shall, at least 60 days in advance of any proposed discharge or release of Return Flow, furnish the following information in writing to the Secretary and the Lessor.

(I) The amount of Return Flow available.

(ii) The location and proposed discharge or release of the Return Flow.

(b) Lessor shall use its best efforts to charge a price for the Return Flow to cover the cost incurred by the Lessee for Project Water plus the cost required to make the Return Flow usable. If the price received for the Return Flow is in excess of the costs incurred by the Lessee, the excess shall be paid forthwith to the Lessor. Costs required to make Return Flow usable shall not include capital costs but shall include but not be limited to OM&R costs including transportation treatment, and distribution. The portion of the consideration thereof which may be paid by Lessor to the Lessee shall be subject to the advance approval of the Lessor and the Secretary.

(c) Any Return Flow captured by the United States and determined by the Secretary and the Lessor to be suitable and available for use by- the Lessee may be delivered by the United

States or Operating Agency to the Lessee as a part of the water supply for which the Lessee leases hereunder and such water shall be accounted and paid for pursuant to the provisions hereof.

(d) ~~All~~ capture, recapture, use, or reuse of ~~Return Flow Under this article~~ shall be consistent with ~~Arizona~~ water law unless such law is inconsistent with Federal law applicable to the Central Arizona Project, this lease and the Lessor's contract.

7.0 Water and Air Pollution Control. The Lessee, in carrying out this lease, shall comply with all applicable water and air pollution laws and regulations of the United States and the State of Arizona and shall obtain all required permits or licenses from the appropriate Federal, State, or local authorities.

8.0 Quality of Water. The operation and maintenance of Project facilities shall be performed in such manner as is practicable to maintain the quality of water made available through such facilities at the highest level reasonably attainable as determined by the Secretary. Neither the United States, the Lessor, nor the Operating Agency warrants the quality of water and is under no obligation to construct or furnish water treatment facilities to maintain or better the quality of water. The Lessee waives its right to make a claim against the United States, the Operating Agency, the Lessor, or another Lessee because of changes in water quality caused by the commingling of Project Water with other water.

9.0 Loss of Entitlement. The Lessee shall have no right to delivery of water from Project facilities during any period in which the Lessee may be in arrears in the payment of any charges

due the Lessor. Failure to pay any lease payment, OM&R charge or other appropriate charge related to this lease shall constitute a default under this lease. Failure to cure such default within the periods set forth in this lease may constitute a material breach which may subject Lessee to all remedies available to Lessor, including termination of this lease. During any period of default during which deliveries to Lessee have been terminated due to such default the Lessor may use the water within its Reservation or lease to another entity any water determined to be available under the Lessee's lease for which payment is in arrears. Prior to the time any termination for default is deemed final, the Lessee may regain the right to use any unused or unleased portion of the water determined to be available under the lease upon payment of all delinquent charges plus any difference between the obligation under this lease and the price received in the lease of the water by the Lessor and payment of charges for the current period.

10.0 Refusal to Accept Delivery. In the event the Lessee fails or refuses in any Year to accept delivery of the quantity of water available for delivery to and required to be accepted by it pursuant to this lease, or in the event the Lessee in any Year fails to submit a schedule for delivery as provided in Paragraph 4.4 hereof, said failure or refusal shall not relieve the Lessee of its obligation to make the payments required in this lease.

11.0 Charge for Later Payments. The Lessee shall pay a late payment charge on installments or charges which 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.

12.0 Water Conservation Proms.m.

(a) There is a strong Lessor and Federal interest in developing an effective water conservation program because of this lease. The Lessee shall develop and implement an effective water conservation program for all uses of water which is provided from or conveyed through Federally constructed or Federally financed facilities. The water conservation program shall contain definite goals, appropriate water conservation measures, and time schedules for meeting the water conservation objectives.

(b) .A water conservation program. acceptable to the Secretary shall be in existence prior to delivery of water to Lessee under this lease. Following execution of this lease, and at subsequent 5-year intervals, the Lessee shall resubmit the water conservation plan to the Lessor and Secretary for review. After review of the result of the previous 5 years and after consultation with the Lessor, the Lessee, and the Arizona Department of Water Resources or its successor, the Secretary may approve such plan or require modifications in the water conservation program to better achieve program goals.

13.0 Officials Not to Benefit.

(a) NO Member of or Delegate to Congress or Resident Commissioner, no officer or employee of the United States, the Lessor, the Lessee or the Operating Agency shall be admitted to any share or part of this lease or to any benefit that may arise herefrom. This restriction shall not be construed to extend to this lease if made with a corporation or company for its general benefit.

(b) No officer or employee of the Lessor, the Lessee, the United States or the Operating Agency shall receive any benefit that may arise by reason of this lease other than as a water user within the Project and in the same manner as other water users within the Project.

14.0 Books, Records, and Reports. The Lessee shall establish and maintain accounts and other books and records pertaining to its **financial** transactions, land use and crop census, water supply, water use, changes of Project works, and to other matters as the Secretary and Lessor may reasonably require. Reports thereon shall be furnished to the Secretary and Lessor in such form and on such date or dates as the Secretary may require. Subject to applicable Tribal and Federal laws and regulations, each party shall have the right during office and upon 10 days written notice to examine and make copies of each other's books and records relating to matters covered by this lease.

15.0 Equal Opportunity. During the performance of this lease, the Lessee agrees as follows:

(a) The Lessee shall not discriminate against any employee or application for employment because of race, color, religion, sex, or national origin. The Lessee shall take

affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited, to the following: Employment, upgrade, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Lessee agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(b) The Lessee shall, in all solicitations or advertisements for employees placed by or on behalf of the Lessee, state that all qualified applicants shall receive consideration for employment without discrimination because of race, color, religion, sex, or national origin.

(c) The Lessee shall send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or **understanding**, a notice, to be provided by the Secretary, advising said labor union or workers' representative of the Lessee's commitments under Section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(d) The Lessee shall comply with all provisions of Executive Order No. 11246 of September 24, 1965, as amended, and of the rules, regulations and relevant orders of the Secretary of Labor.

(e) The Lessee shall furnish all information and reports required by said amended

Executive Order and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and shall permit access to its books, records, and accounts by the Secretary and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(f) In the event of the Lessee's noncompliance with the nondiscrimination clauses of this lease or with any of the such rules, regulations, or orders, this lease may be canceled, terminated, or suspended, in whole or in part, and the Lessee may be declared ineligible for ~~future~~ Government contracts in accordance with procedures authorized in said amended Executive Order and such other sanctions may be imposed and remedies invoked as provided in said amended Executive Order, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(g) The Lessee shall include the provisions of paragraphs (a) through (g) in every lease or purchase order unless exempted by the rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of said amended Executive Order, so that such provisions shall be binding upon each lessee or vendor. The Lessee shall take such action with respect to any lease or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions, including sanctions for noncompliance; Provided, however, that in the event a Lessee becomes involved in, or is threatened with, litigation with a lessee or vendor as a result of such direction, the Lessee may request the United States to enter into such litigation to protect the interest of the United States.

16.0 Title VI. Civil Rights Act of 1964.

(a) The Lessee agrees that it shall comply with Title VI of the Civil Rights Act of July 2, 1964 (78 Stat.241), and all requirements imposed by or pursuant to the Department of the Interior Regulation (43 CFR 17) issued pursuant to that title to the end that, in accordance with Title VI of that Act and the Regulation, no person in the United States shall, on the grounds of race, color, or national origin be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the Lessee receives financial assistance from the United States and hereby gives assurance that it shall immediately take any measures to effectuate this agreement.

(b) If any real property or structure thereon is provided or improved with the aid of Federal financial assistance extended to the Lessee by the United States, this assurance obligates the Lessee, or in the case of any transfer of such property, any transferee for the period during which the real property or structure is used for a purpose involving the provision of similar services or benefits. If any personal property is so provided, this assurance obligates the Lessee for the period during which the Federal financial assistance is extended to it by the United States.

(c) This assurance is given in consideration of and for the purpose of obtaining any and all Federal grants, loans, contracts, property, discounts, or other Federal financing assistance extended after the date hereof to the Lessee by the United States, including installment payments after such date on account of arrangements for Federal financial assistance which were approved before such date. The Lessee recognizes and agrees that such Federal financial assistance shall

be extended in reliance on the representations and agreements made in this assurance, and that the United States shall reserve the right to seek judicial enforcement of this assurance. This assurance is binding on the Lessee, its successors, transferees, and assignees.

17.0 Contingent on Appropriation or Allotment of Funds. The expenditure or advance of any money or the performance of any work by the United States or the Lessor hereunder which may require appropriation of money by the Congress or the allotment of funds shall be contingent upon such appropriation or allotment being made. The failure of the Congress to appropriate funds or the absence of any allotment of funds shall not relieve the Lessee from any obligation under this lease. No liability shall accrue to the United States or the Lessor in case such funds are not appropriated or allotted.