

WATER DELIVERY AGREEMENT

Third Amendment

THIS IS THE THIRD AMENDMENT (the “Third Amendment”) TO THE WATER DELIVERY AGREEMENT (as amended, the “Water Delivery Agreement”) by and between the CITY OF YUMA, a municipal subdivision of the State of Arizona (the “City”) and YUMA COGENERATION ASSOCIATES, a Utah Partnership (the “Owner”), dated May 19, 1993.

RECITALS

- A. The Owner owns certain property outlined in red as lot #1 in Exhibit “A” attached hereto (the “Project Property”). The Project Property is member land located within the boundaries of the Yuma County Water Users’ Association (the “Association”).
- B. The City has an entitlement, pursuant to a contract with the United States Secretary of the Interior to 50,000 acre-feet annually of Colorado River Water.
- C. The City owns and operates a Domestic Water Treatment Plant pursuant to system No. 14024-1 and 14024-2 issued by the Arizona Department of Environmental Quality. The City owns and operates a Water Pollution Control Facility located west of the Project Property (“WPCF”) pursuant to permit NO. AZ0020443, issued by the United States Environmental Protection Agency.
- D. Pursuant to the Water Delivery Agreement, the Owner desires to purchase raw water from the Colorado River (“Raw Water”), waste water effluent (“Effluent”), and potable water (“Potable Water”) from the City for use on the Project Property.

- E. The City and Owner entered into the Water Delivery Agreement, which provided for the use by Owner of 500 acre-feet of raw water rather than 1,000 acre-feet of effluent until December 31, 1999.
- F. The Water Delivery Agreement was amended on March 19, 1997. This First Amendment to the Water Delivery Agreement provided for the use by the Owner of 500 acre-feet of raw water rather than 1,000 acre-feet of effluent until December 31, 2003.
- G. The Water Delivery Agreement was amended a second time on July 16, 2003. This Second Amendment to the Water Delivery Agreement extended the option for the use by the Owner of 500 acre-feet of raw water rather than 1,000 acre-feet of effluent until December 31, 2007.
- H. Despite the December 31, 2007 expiration for the option for the use by the Owner of 500 acre-feet of raw water rather than 1,000 acre-feet of effluent provided in the Second Amendment, the Owner continued to exercise the option by sending annual notices and paying the water demand charge for 820 acre-feet of raw water annually through 2017.
- I. Owner now desires to extend the date for utilization of raw water in lieu of effluent through the end of the term of the original water Delivery Agreement, December 31, 2024, and decrease the quantity of raw water in lieu of effluent from 500 acre-feet per year to 250 acre-feet per year.

NOW THEREFORE, the City and Owner COVENANT AND AGREE as follows:

- 1. Article 20 of the Water Delivery Agreement is hereby amended and restated to read as follows:

20. Owner Option

a) Option to Contract for Additional Raw Water. During any calendar year after the effective date of this Water Delivery Agreement, up to and including the calendar year ending December 31, 2024, the Owner shall have the option ("Option") to receive an additional 250 acre-feet of Raw Water (not to exceed 1.56 acre-feet per day) in lieu of the 1,000 acre-feet of Effluent contracted for herein. The option to contract for additional Raw Water in lieu of Effluent must be exercised by the Owner by delivery to the City of written notice of Owner's intent to take Raw Water in lieu of Effluent by December 31 of the year prior to the calendar year in which such additional Raw Water will be delivered. If such option is exercised by the Owner, the Owner may receive an additional 250 acre-feet annually of Raw Water (but not 1,000 acre-feet of Effluent), subject to the following terms and conditions:

1. Payments: Demand Charges and Consumption Charges for the additional 250 acre-feet annually of Raw Water shall be calculated on a per acre-foot basis as set forth in subsections 7(c)(1) and 7(d)(2) hereof; provided, however, that the Minimum Demand Charge for Raw Water shall be based on 570 acre-feet annually, instead of 320 acre-feet annually. Demand Charges for Effluent provided for in Section 7(c)(2) shall be suspended and not accrued

during any period in which Owner is taking Raw Water in lieu of Effluent.

2. Shortage Years. In Years in which a shortage of Colorado River water is declared by the Secretary of the Interior as set forth in Paragraph 5(b) hereof, the amount of Raw Water delivered by the City to the Owner may be reduced. If the full 570 acre-feet of Raw Water is unavailable for use by the Owner on the Project Property during a shortage year, the Owner may elect to receive Effluent in an amount equal to 125% of the acre-foot reduction in Raw Water deliveries by the City to the Project Property. Consumption charges for Effluent delivered to the Project Property during the shortage period will be assessed in accordance with subsection 7(d)(3) hereof.
3. Limitation on Exercise of Option. The Owner may exercise its Option to receive additional Raw Water in lieu of Effluent any calendar year from which the Option is in effect; provided, however, that if the Owner, in any subsequent year, elects to resume deliveries of Effluent in place of said additional Raw Water, the Option provided for in subsection 20(a) shall terminate and total Raw Water deliveries to the Project Property shall not exceed 320 acre-feet annually.

4. Construction of Effluent Water Lines. If Owner exercises its option granted under Section 20 during such period when Owner is taking delivery of Raw Water in lieu of Effluent, Owner's Obligation to construct and maintain the water lines for delivery of Effluent from the Effluent Delivery Point shall be suspended.

b) [Not Used]

2. Article 22 of the Water Delivery Agreement is hereby amended and restated to read as follows:

22. Capital Investments. Upon commencement of full operations and production, but no later than January 1, 1995 and continuously thereafter, the Owner shall provide a minimum of 10 full time jobs on the Yuma Project Property with a capital investment in its project in the Yuma Area of not less than \$50 million. The City reserves the right to inspect the books and records of the Owner to verify the amount of capital investment in the Yuma Project.

Provisions of the Water Delivery Agreement to Remain Effective

3. Except as expressly modified herein, the provision of the Water Delivery agreement shall remain operative and binding on these two parties.

[Remainder of page intentional left blank]

IN WITNESS WHEREOF, the parties hereto have caused this Third Amendment to be executed
this ____ day of _____, 2017.

YUMA COGENERATION ASSOCIATES
By California Energy Development
Corporation, its managing partner

CITY OF YUMA, a Municipal Corporation
of the State of Arizona

By: _____
Lawrence Ornellas, General Manager

By _____
Greg Wilkinson, City Administrator

ATTEST:

APPROVED AS TO FORM

Lynda Bushong, City Clerk

Richard W. Files, City Attorney