

**AGREEMENT BETWEEN
THE ARIZONA WATER BANKING AUTHORITY
AND _____
PROVIDING FOR STORAGE OF CENTRAL ARIZONA PROJECT WATER
AT A GROUNDWATER SAVINGS FACILITY**

1. The ARIZONA WATER BANKING AUTHORITY (“AWBA”) and the _____ DISTRICT (“Facility Operator”) hereby enter into this Agreement.

2.
 - 2.1 The purpose of this Agreement is to provide for the storage of Central Arizona Project water, which the AWBA is legally entitled to store, at the Groundwater Savings Facility operated by the Facility Operator.
 - 2.2 The Parties recognize that this Agreement is one of a series of agreements entered into by the AWBA to provide for the storage of Central Arizona Project water. These agreements include the Intergovernmental Agreement among the Arizona Department of Water Resources, Arizona Water Banking Authority, and Central Arizona Water Conservation District, dated January 3, 2019, and the Agreement between the Central Arizona Water Conservation District and the Arizona Water Banking Authority Providing for the Delivery of Excess Central Arizona Project Water, dated November 17, 2016. These agreements, in turn, are subject to certain agreements entered into by the Central Arizona Water Conservation District regarding the operation of the Central Arizona Project. These agreements include Contract No. 14-06-W-245, Amendment No. 1, dated December 1, 1988, between the United States and the Central Arizona Water Conservation District, and Stipulation Regarding a Stay of Litigation, Resolution of Issues During the Stay and for Ultimate Judgment upon the Satisfaction of Conditions, filed with the United States District Court on May 3, 2000, in Central Arizona Water Conservation District v. United States, No. CIV 95-625-TUC-WDB (EHC), No. CIV 95-1720-PHX-EHC

(Consolidated Action). The Parties to this Agreement recognize and agree that this Agreement is subject to the agreements referenced in this Section 2.2 and that in the event of any inconsistency between this Agreement and agreements referenced, the provisions of the agreements referenced shall be controlling.

2.3 The Parties agree that the Central Arizona Water Conservation District shall have rights as a third-party beneficiary to enforce certain provisions that are specified in this Agreement. Designated Recovery Agents, as described in Section 11.1 of this Agreement, shall have rights as a third-party beneficiary as described in Section 11.11 of this Agreement.

3. In this Agreement, the following terms shall have the following meanings:

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

3.2 "Authority Water" shall mean water made available by CAWCD to the AWBA on an annual basis for underground storage pursuant to the terms of the Excess CAP Water Contract between the AWBA and CAWCD, which water would not otherwise have been used within Arizona.

3.3 "CAP" shall mean the Central Arizona Project.

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

3.5 "Party or Parties" shall mean either one, or in the plural, both of the parties to this Agreement.

3.6 Definitions specified in A.R.S. § 45-802.01 are applicable to this Agreement. The first letters of terms so defined are capitalized.

4. This Agreement shall be effective on the date fully executed by both Parties and shall terminate on December 31, 2031 unless the parties agree in writing to extend the term or unless it is sooner terminated or cancelled in accordance with Section 13.

5. The delivery and use of water under this Agreement are conditioned on the following, and the Parties agree that:

5.1 All uses of Authority Water shall be consistent with Arizona water law and with federal law applicable to the CAP.

5.2 Authority Water made available pursuant to this Agreement shall be used only at the Groundwater Savings Facility for which the Facility Operator has obtained and continues to maintain Groundwater Savings Facility Permit, No. 72-XXXXXX, or modifications or renewals of that permit. The Facility Operator shall be responsible for all expenses and administrative requirements, including filing annual reports with the ADWR, associated with maintaining the Groundwater Savings Facility permit. The Facility Operator's use of Authority Water at such Groundwater Savings Facility shall at all times comply with the plan of operation of the Groundwater Savings Facility Permit. If such Groundwater Savings Facility Permit is cancelled or expires for any reason the Facility Operator shall immediately notify the AWBA and deliveries of Authority Water to the Facility Operator may, at the option of the AWBA, be discontinued immediately. The Facility Operator shall notify the AWBA if it files an application with the ADWR to amend its Groundwater Savings Facility permit.

5.3 Authority Water made available to the Facility Operator pursuant to this Agreement shall be used within the Facility Operator's Groundwater Savings Facility for Water Storage purposes only.

5.4 The Facility Operator shall cause the pumping of groundwater within the Facility Operator's Groundwater Savings Facility to be reduced by one acre-foot for each one acre-foot of Authority Water received at the Facility.

5.5 The Facility Operator shall submit to the AWBA a monthly report of water

use. The monthly report shall be in a form and submitted within a time which is acceptable to the AWBA and shall contain a report of water use by amount and type of water used.

- 5.6 The AWBA shall obtain a Water Storage Permit from the ADWR to store water at the Facility Operator's Groundwater Savings Facility. The AWBA shall be responsible for all expenses and administrative requirements, including filing annual reports with the ADWR, associated with maintaining the Water Storage Permit.
6. 6.1 On or before September 1, the Facility Operator shall consult with the AWBA and provide a written projection of the Facility Operator's water use by type and amount for each month of the following year, which the AWBA may use to develop its annual plan of operation for the following year.
 - 6.2 On or before December 1, the AWBA shall return to the Facility Operator a final water delivery schedule based on the AWBA's draft annual plan of operation for the following year.
 - 6.3 The AWBA shall authorize the Facility Operator to order Authority Water for delivery to the Groundwater Savings Facility directly from CAWCD in accordance with CAWCD water ordering procedures and the AWBA's plan of operation.
 - 6.4 The amounts, times and rates of delivery of Authority Water to the Facility Operator during any year shall be in accordance with the current plan of operation of the Authority. Authority Water ordered by the Facility Operator shall not exceed the amounts provided for in the current plan of operation of the Authority, unless approved in writing by the Authority.
 - 6.5 Monthly water deliveries may be amended upon the Facility Operator's

written request to CAWCD with copy to the AWBA. Proposed amendments shall be submitted by the Facility Operator to CAWCD with copy to the AWBA not less than fifteen (15) days before the desired change is to become effective, and shall be subject to review and modification by CAWCD and the AWBA.

- 6.6 The Facility Operator shall hold the AWBA and CAWCD, their officers, agents, and employees, harmless on account of damage or claim of damage of any nature whatsoever arising out of or connected with water delivery schedules furnished by or to the Facility Operator.
7. 7.1 The AWBA may reduce or discontinue deliveries of Authority Water to the Facility Operator under this Agreement in one or more of the following events:
 - 7.1.1 The Facility Operator fails to file the monthly report(s) required by Section 5.5.
 - 7.1.2 The Facility Operator violates the permit or plan of operation associated with the Groundwater Savings Facility or takes any action that threatens the AWBA's ability to accrue Long-Term Storage Credits for Authority Water delivered to the Groundwater Savings Facility.
- 7.2 The AWBA shall notify the Facility Operator of any determination to reduce or discontinue deliveries of Authority Water to the Facility Operator.
8. 8.1 On or before October 1 of each year, CAWCD and the AWBA shall notify the Facility Operator of the cost for each acre foot of Authority Water to be delivered under this Agreement for the following year ("Facility Operator's

Contribution”).

- 8.2 The Facility Operator shall pay CAWCD directly for all water delivered under this Agreement. On or before the first day of each month, the Facility Operator shall pay CAWCD the amounts due as the Facility Operator’s Contribution for Authority Water scheduled for delivery during that month.
- 8.3 The Facility Operator shall pay CAWCD in advance all amounts due as the Facility Operator’s Contribution for Authority Water scheduled for delivery under this Agreement; however, CAWCD has agreed to reimburse the Facility Operator for any portion of the Facility Operator’s Contribution which is attributable to Authority Water scheduled for delivery that is not subsequently delivered to the Facility Operator or to provide an equivalent credit against payment in the future of any fees owed CAWCD by the Facility Operator, should the Facility Operator so desire. CAWCD shall not be required to deliver water scheduled under this Agreement if the Facility Operator is in arrears in payment of any charges due CAWCD for a period of 60 days or more.
- 8.4 CAWCD shall be entitled, as a third-party beneficiary to this Agreement, to collect from the Facility Operator any charges for water owed under this Section 8, along with interest, administrative and penalty charges on delinquent installments or payments, in accordance with the following:
- 8.4.1 The Facility Operator shall pay an interest charge for each day the payment is delinquent beyond the due date. When a payment becomes sixty (60) days delinquent, the Facility Operator shall pay an administrative charge to cover additional costs of billing and processing the delinquent payment. When a payment is delinquent ninety (90) days or more, the Facility Operator shall pay an additional

penalty charge of six percent (6%) per year for each day the payment is delinquent beyond the due date. Further, the Facility Operator shall pay any fees incurred for debt collection services associated with a delinquent payment.

8.4.2 The interest charge rate shall be the greater of the rate prescribed quarterly in the Federal Register by the Department of the Treasury for application to overdue payments, or the interest rate of 0.5 percent (0.5%) per month prescribed 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.

8.4.3 When a partial payment on a delinquent account is received, the amount received shall be applied first to the penalty and administrative charges, second, to the accrued interest, and third to the overdue payment.

8.5 If the AWBA is not given Long-Term Storage Credits because the Facility Operator has violated the Groundwater Savings Facility permit or plan of operation, the Facility Operator shall pay to the AWBA any water service charges paid by the AWBA to CAWCD for the water delivered to the Groundwater Savings Facility which did not accrue Long-Term Storage Credits (“payment”), or, at the request of the AWBA, facilitate and compensate for the transfer of Long-Term Storage Credits to the AWBA in an amount equal to the Long-Term Storage Credits not received, pursuant to state law (“transfer of credits”). The AWBA will provide written notice that ADWR has not issued credits to the AWBA. The notice will state whether the AWBA is requesting payment or transfer of credits. If the AWBA

requests payment, the Facility Operator shall submit the payment within 60 days of the date of the notice. If the AWBA requests transfer of credits, within 60 days of the date of the notice, the Facility Operator shall provide an explanation of how the transfer of credits will be accomplished. The Facility Operator shall complete the transfer of credits within 1 year of the date of the notice.

9. 9.1 Nothing in this Agreement shall be construed as an allocation of water to the Facility Operator, nor shall this Agreement entitle the Facility Operator to any water other than as provided herein.
 - 9.2 Nothing in this Agreement shall be construed as requiring the AWBA to provide Authority Water to the Facility Operator in any year, and nothing in this Agreement shall be construed as requiring the Facility Operator to accept deliveries of Authority Water in any year. The Parties agree that in any year in which the AWBA desires to provide Authority Water to the Facility Operator and in which the Facility Operator agrees to accept deliveries of Authority Water, the terms and conditions of this Agreement shall apply.
10. Neither the AWBA nor CAWCD warrant the quality of any water furnished under this Agreement and are under no obligation to construct or furnish water treatment facilities to maintain or better the quality of any water. The Facility Operator waives its right to make a claim against the AWBA or CAWCD, on account of the quality of water or any changes in water quality caused by the commingling of water delivered under this Agreement with other water.

11. 11.1 The Parties agree that the AWBA may designate a third-party agent to exercise the right to recover the AWBA's water stored under this Agreement. The AWBA shall, in accordance with Section 15 of this Agreement, notify the Facility Operator of the appointment of a Designated Recovery Agent pursuant to this Section 11.
- 11.2 The Facility Operator agrees to cooperate with the Designated Recovery Agent in facilitating the recovery of Long-Term Storage Credits stored by the AWBA at the Facility Operator's Groundwater Savings Facility.
- 11.3 The Facility Operator agrees not to register any objection with the ADWR to an application for a recovery well permit filed by the Designated Recovery Agent or other entities seeking to recover water stored by the AWBA so long as the water is to be recovered at the Groundwater Savings Facility at which it was stored.
- 11.4 Upon the distribution of Long-Term Storage Credits by the AWBA to a Designated Recovery Agent, the Designated Recovery Agent may, at the Designated Recovery Agent's sole expense, recover the Long-Term Storage Credits at the Groundwater Savings Facility upon written notification to the Facility Operator.
- 11.5 The Designated Recovery Agent shall not recover Long-Term Storage Credits within the Facility Operator's boundaries that were not accrued by the AWBA at the Facility Operator's Groundwater Savings Facility, unless the Facility Operator agrees in writing to allow the Designated Recovery Agent to recover other Long-Term Storage Credits.
- 11.6 To recover Long-Term Storage Credits pursuant to this Section 11, the Facility Operator shall allow the Designated Recovery Agent to recover the

AWBA's Long-Term Storage Credits using the Facility Operator's wells. Such use shall be subject to the Facility Operator's operational control of the wells and shall be made only when, in the discretion of the Facility Operator, there is sufficient well capacity and water transportation facilities available to recover the Long-Term Storage Credits without disrupting delivery of irrigation water to the Facility Operator's customers; however, such discretion shall not be unreasonably exercised so as to defeat the intent of this Section 11. The Facility Operator shall provide to the AWBA within 1 year after execution of this Agreement a description of wells and well sites which the Designated Recovery Agent could utilize for recovery purposes, including the necessary authorization for Facility Operator's use of such wells and well sites.

- 11.7 If insufficient well capacity is available within the Facility Operator's boundaries to meet a recovery request, the Designated Recovery Agent may install, own, operate and maintain new wells and related facilities or, at the Designated Recovery Agent's request, the Facility Operator may, under a separate agreement, install, own, operate and maintain new wells and related facilities, provided that the Designated Recovery Agent pays the Facility Operator in advance all construction costs associated with such new wells and facilities. All of the fixed and variable operating costs of such facilities attributable to the recovery of Long-Term Storage Credits shall be the sole responsibility of the Designated Recovery Agent. Nothing herein requires the Facility Operator to construct facilities that, in their judgement, would interfere with the operation of existing wells within the Facility Operator's water delivery system. The Designated Recovery Agent shall

reimburse the Facility Operator the cost of obtaining all permits required to drill new recovery wells identified by the Designated Recovery Agent for purposes of this Agreement.

- 11.8 The Designated Recovery Agent shall be responsible for obtaining and maintaining recovery well permits and shall pay all permit fees and other costs and expenses of any nature associated with recovery of Long-Term Storage Credits at the Groundwater Savings Facility.
- 11.9 The Designated Recovery Agent shall reimburse the Facility Operator for all reasonable costs incurred by the Facility Operator in the recovery of Long-Term Storage Credits in accordance with this Section 11. These costs may include, but are not limited to wheeling services, scheduling costs, incremental increased cost of power, and incremental increased cost of operation, maintenance, and replacement of wells and/or pumps within the Facility Operator's Groundwater Savings Facility. Prior to any recovery under this Section 11, the Designated Recovery Agent and the Facility Operator shall agree upon the costs for which the Designated Recovery Agent shall be responsible. The Designated Recovery Agent and the Facility Operator may agree that the Designated Recovery Agent will provide power to operate the wells to offset part of the agreed upon costs.
- 11.10 The Facility Operator does not warrant the quality of water produced from recovery wells and is under no obligation to construct or furnish water treatment facilities to maintain or improve the quality of such water. The Designated Recovery Agent waives its right to make a claim against the Facility Operator because of changes in water quality caused by underground storage or the mixing of recovered water with other water.

Notwithstanding this Section 11.10, the Facility Operator agrees to comply with state and federal law.

11.11 It is the express intention of the Parties that the Designated Recovery Agent be a third-party beneficiary of the obligations and duties of the provisions of this Section 11, and that the third-party beneficiary shall be considered a “Party” only for the purposes of this Section 11, except that CAWCD shall also have rights as a third-party beneficiary as described in other Sections of this Agreement. The rights of the third-party beneficiary under this Section 11 shall vest immediately upon notification of the Facility Operator by the AWBA of the designation of a Designated Recovery Agent in accordance with this Section 11. The Parties agree that the terms of this Section 11 shall not, in any way, limit the rights or privileges of the AWBA under this Agreement.

11.12 The obligations set forth in this Section 11 shall survive the expiration or termination of this Agreement and remain in full force and effect until all Authority Water stored at the Facility Operator’s Groundwater Savings Facility has been recovered.

12. 12.1 Authority Water furnished to the Facility Operator pursuant to this Agreement shall be delivered only to the Facility Operator at such point(s) that have previously been approved by CAWCD and only if CAWCD has satisfied itself that the pipelines, canals, distribution systems, or other conduits that will convey Authority Water after delivery will prevent excessive conveyance losses and are constructed, operated, and maintained in accordance with any condition of applicable laws, regulations or order and to the satisfaction of CAWCD.

- 12.2 In the event of damage to CAP facilities due to failure of the Facility Operator to operate in a good and workmanlike manner, the Facility Operator shall pay the CAWCD within thirty (30) days of Facility Operator's receipt of a statement for the costs of repairing any damage to Project facilities or Project rights-of-way caused by or arising out of the Facility Operator's activities under this Agreement.
- 12.3 If the Facility Operator's Project delivery point is a Project turnout or Project turnouts constructed by the United States, and if the Facility Operator intends to convey water furnished to the Facility Operator pursuant to this Agreement through connection facilities owned or operated by others, the use by the Facility Operator of such connection facilities shall be the subject of written agreement(s) between the Facility Operator and the owner(s) or operator(s) of such connection facilities, and all such agreements shall be provided to the CAWCD prior to initiation of deliveries.
- 12.4 Unless the Facility Operator's Project delivery point is a Project turnout or Project turnouts constructed by the United States, all water delivered from the Water Supply System shall be measured with equipment furnished and installed by the Facility Operator and operated and maintained by the Facility Operator at the Facility Operator's sole cost and expense. The results of such measurements shall be reported to CAWCD in such manner and at such time(s) as CAWCD may prescribe. Upon the request of CAWCD or the AWBA, the accuracy of such measurements shall be investigated by the Facility Operator, and any errors which are determined to have occurred therein shall be adjusted; however, in the event the parties cannot agree on the required adjustment, CAWCD's determination shall be

conclusive.

- 12.5 If the Facility Operator's Project delivery point is a Project turnout or Project turnouts constructed by the United States, 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 CAWCD. Upon the request of the Facility Operator, the AWBA, or CAWCD, the accuracy of such measurements shall be investigated by CAWCD and the Facility Operator, and any errors which are mutually determined to have occurred therein shall be adjusted; however in the event the parties cannot agree on the required adjustment, CAWCD's determination shall be conclusive.
- 12.6 The United States, CAWCD, and the AWBA shall not be responsible for the control, carriage, handling, use, disposal, or distribution of water beyond the Facility Operator's Project delivery point. The Facility Operator shall hold the United States, CAWCD, and the AWBA 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 control, carriage, handling, use, disposal, or distribution of water beyond the Facility Operator's Project delivery point.
- 12.7 The AWBA shall not be liable for any action taken by CAWCD or the Facility Operator pursuant to this Section 12 regarding the construction, operation, or maintenance of connection facilities.
- 12.8 Deliveries of water scheduled under this Agreement are subject to interruption and discontinuance due to investigation, inspection, construction, testing, maintenance, repair or replacement of the CAP and its components. The Facility Operator also acknowledges that CAP water

available to the AWBA is only that water which would otherwise be unused in Arizona and, therefore, deliveries of water scheduled under this Agreement are subject to interruption and discontinuance due to insufficient water or delivery capacity to deliver all other waters scheduled for delivery through the CAP. The United States, its officers, agents, and employees, CAWCD, its officers, agents and employees, and the AWBA, its officers, agents, and employees shall not be liable for any damages when, for any reason whatsoever, any interruption, discontinuance, or reduction in delivery of water scheduled under this Agreement occurs.

13. 13.1 This Agreement may be terminated for any of the following reasons:

13.1.1 If the Facility Operator remains in arrears in the payment of the Facility Operator's Contribution for thirty (30) days or more, the AWBA may terminate this Agreement, which termination shall be effective fifteen (15) days after mailing written notice of termination to the Facility Operator;

13.1.2 If the Facility Operator remains in arrears in the reimbursement of any portion of the AWBA's Contribution for thirty (30) days or more, the AWBA may terminate this Agreement, which termination shall be effective fifteen (15) days after mailing written notice of termination to the Facility Operator and CAWCD;

13.1.3 If the Excess CAP Water Contract between the AWBA and CAWCD providing for delivery of Authority Water is terminated, the AWBA may terminate this Agreement, which termination shall be effective fifteen (15) days after mailing written notice of termination to the Facility Operator; or

- 13.1.4 if the AWBA determines in its sole discretion that the Facility Operator is operating the Groundwater Savings Facility in a manner contrary to law or in a manner which is likely to jeopardize the ability of the AWBA to earn Long-Term Storage Credits for Authority Water delivered to the facility for the benefit of the AWBA, the AWBA may terminate this Agreement, which termination shall be effective ten (10) days after mailing written notice of termination to the Facility Operator and CAWCD.
- 13.2 Any rights under this Agreement to collect any monies owed under the Agreement and any rights pursuant to Section 11 of this Agreement shall survive the termination of this Agreement.
- 13.3 The rights of the AWBA to terminate this Agreement as provided in this Section 13 shall be in addition to all other rights of the AWBA under this Agreement and as provided by law.
14. The Facility Operator shall establish and maintain accounts and other books and records pertaining to administration of the terms and conditions of this Agreement, including: the Facility Operator's water supply data, water-use data, and other matters that the AWBA or CAWCD may require. Reports thereon shall be furnished to the AWBA or CAWCD in such form and on such date or dates as the AWBA or CAWCD may require. Subject to applicable federal and state laws and regulations, each party to this Agreement shall have the right during office hours to examine and make copies of each other party's books and records relating to matters covered by this Agreement.

15. Any notice, demand, or request authorized or required by this Agreement shall be in writing and shall be deemed to have been duly delivered by email or first-class mail to the following addresses:

If to the AWBA:

Manager
Arizona Water Banking Authority
1110 West Washington Street, Suite 310
Phoenix, Arizona 85007
Email: voconnell@azwater.gov

If to the Facility Operator:

General Manager
[insert address and email address]

The designation of the address or addressee, including email addresses, may be changed by notice given as provided in this Section 15.

16. The parties shall comply with Chapter 9, Title 41, Arizona Revised Statutes, Arizona Executive Order 2009-09, which modifies Executive Order 75-5 and amends Executive Order 99-4 and any other federal or state laws relating to equal opportunity and non-discrimination, including the Americans with Disabilities Act.
17. The provisions of this Agreement shall apply to and bind the successors and assigns of the parties hereto, but no assignment or transfer of this Agreement or any interest therein shall be valid unless and until approved in writing by the AWBA.

18. This Agreement is subject to cancellation in accordance with the provisions of A.R.S. § 38-511.
19. This Agreement may be executed in counterparts, each of which shall be an original and all of which, together, shall constitute only one Agreement.

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**AGREEMENT BETWEEN
THE ARIZONA WATER BANKING AUTHORITY
AND _____
PROVIDING FOR STORAGE OF CENTRAL ARIZONA PROJECT WATER AT A
GROUNDWATER SAVINGS FACILITY**

ARIZONA WATER BANKING AUTHORITY

AGREED on this ____ day of _____, 2021

By: _____
Thomas Buschatzke, Chair

ATTEST:

Alexandra Arboleda, Secretary

APPROVED AS TO FORM:

Print Name: _____

Title: _____

**AGREEMENT BETWEEN
THE ARIZONA WATER BANKING AUTHORITY
AND _____
PROVIDING FOR STORAGE OF CENTRAL ARIZONA PROJECT WATER
AT A GROUNDWATER SAVINGS FACILITY DISTRICT**

[Insert District Name]

AGREED on this ____ day of _____, 2021

By: _____
[insert name and title]

ATTEST:

[insert name and title]

APPROVED AS TO FORM:

[insert name of counsel and title]