INTERGOVERNMENTAL AGREEMENT
AMONG THE
ARIZONA DEPARTMENT OF WATER RESOURCES,
ARIZONA WATER BANKING AUTHORITY AND
CENTRAL ARIZONA WATER CONSERVATION DISTRICT

This Intergovernmental Agreement is made this _____ day of _____, 2018, among the Arizona Water Banking Authority, an agency of the State of Arizona (the "AUTHORITY" or "AWBA"), the Arizona Department of Water Resources, an agency of the State of Arizona ("ADWR"), and the Central Arizona Water Conservation District, a political subdivision of the State of Arizona ("CAWCD").

RECITALS

A. AWBA is required by A.R.S. §45-2423 to perform water banking services and is authorized by A.R.S. §45-2471 to perform interstate water banking, in addition to storing Colorado River water brought into the state through the Central Arizona Project ("CAP") for the purpose of:

1. Protecting the state's municipal and industrial water users against future water shortages on the Colorado River and disruptions of operation of the CAP
2. Fulfilling the water management objectives of the state of Arizona
3. Making water available to implement the settlement of water rights claims by Indian communities with the state of Arizona.

B. ADWR is required by A.R.S. §45-2424(A) to provide administrative, technical and legal support to the AWBA to the extent requested by the AWBA.

C. CAWCD is required by A.R.S. §45-2424(D) to provide technical support to the AWBA to the extent requested by the AWBA.

D. The AWBA is required to reimburse ADWR and CAWCD for the services provided by each agency to the AWBA pursuant to the provisions of A.R.S. §45-2424.

E. The AWBA has the authority, acting through its Commission, to purchase long-term storage credits ("LTSCs") pursuant to the provisions of A.R.S. §45-2423(B)(2).

F. The AWBA is required to distribute to CAWCD LTSCs accrued or purchased with monies from the tax levy for water storage collected in accordance with A.R.S. § 48-3715.03 ("Water Storage Tax") to the extent necessary to meet the demands of CAWCD's municipal and industrial subcontractors during times of shortage on the Colorado River pursuant to the provisions of §45-2423(A)(4).

G. CAWCD is contractually obligated to recover LTSCs to: (1) meet Interstate water banking obligations with Nevada, and (2) meet shortages for certain On-River Fourth Priority water users with an executed Exchange Agreement with CAWCD.

H. Per A.R.S. § 45-2491(A)(9), AWBA may request that CAWCD be a recovery agent to meet the State's obligations for any Indian Settlement Agreement in which AWBA, as the agent for the State of Arizona, may satisfy any State obligations under the Arizona Water Settlements Act, including any subsequent supplements and amendments.

I. The Parties desire to enter into this Agreement to accomplish the following objectives:

1. Establish the annual process by which services will be requested of CAWCD and ADWR by the AWBA; to establish the amounts of and process for the AWBA to reimburse CAWCD and ADWR for the provision of such services; and to facilitate cooperation among the parties in the exercise of their respective powers and duties.

2. Establish an efficient process by which the AWBA can receive Water Storage Tax revenue from CAWCD for the purpose of purchasing credits pursuant to the provisions of A.R.S. § 45-2423.B(2).

3. Establish an efficient process to meet statutory and contractual recovery obligations.

AGREEMENT

Term

1. (a) This Agreement shall commence on January 1, 2019, and shall remain in effect until December 31, 2028.

(b) This Agreement may be terminated upon sixty (60) days written notice by any party.

(c) This Agreement is subject to cancellation in accordance with the provisions of A.R.S. § 38-511.

Services Provided by ADWR to the AWBA

2. (a) The services that ADWR provides to the general public shall be provided to the AWBA without charge, or at the same rate charged to the general public. Such services include, but shall not be limited to: (1) assistance in completing applications for water storage permits, including attendance at pre-application conferences; (2) responding to requests to view public records in the same manner and at the same rate charged to the public; and (3) determining the amount of LTSCs accrued by the AWBA.

(b) Pursuant to A.R.S. § 45-2424, ADWR shall provide the following administrative, technical and legal support to the AWBA:

(i) ADWR employees necessary to directly staff the AWBA;

(ii) Legal support which shall include, but not be limited to: assistance in preparing all written agreements to which the AWBA is a party; assistance in preparing updates to Storage Site Criteria and Facilities Inventory; review and drafting of AWBA official business; attending AWBA meetings; and providing general legal guidance and advice as requested by AWBA members and staff; and

(iii) Administrative and technical support which shall be in the form of all activities allowed as indirect costs under the Office of Management and Budget Circular A-87, as amended or revised

(iv)

(c) The AWBA shall reimburse ADWR for the specific services provided under Section 2.b above in accordance with Section 4 of this Agreement.

(d) If the AWBA desires that ADWR provide technical services outside of those defined in Section 2.b above, it shall submit a written request to ADWR outlining its specific request for services. If ADWR is willing to provide such services, it shall so notify the AWBA, and provide an estimate of the cost for such services within thirty days of the AWBA request. The AWBA shall reimburse ADWR for additional technical services rendered pursuant to this Section in accordance with Section 4.b of this Agreement.

Services Provided by CAWCD to the AWBA

3. (a) The services that CAWCD provides to the general public or its customers shall be provided to the AWBA without charge, or at the same rate charged to the general public or its customers. Such services include, but are not limited to: (1) monthly and annual water delivery accounting reports, (2) development of long-range projections of CAP delivery capacity and water demand, and (3) monthly billing and annual reconciliation of bills.

(b) Pursuant to A.R.S. §§ 45-2424 (D) and 48-3713 (B)(12), and as provided in Exhibit A attached, CAWCD shall provide the following technical services to the AWBA:

(i) Assist in development of preliminary and final AWBA Annual Plans of Operation and the Ten Year Plan;

(ii) Invoice, collect and process the groundwater savings facility operator's portion of the water service charge for Excess Water delivered on behalf of the AWBA to the groundwater savings facility operator;

(iii) Services related to recovery of LTSCs in accordance with mutually agreed upon Standard Operating Procedures; and

(iv) Planning for interstate banking.

(c) If the AWBA requests that CAWCD provide technical services other than those defined in Section 3.b above ("Additional Services"), it must submit a written request to CAWCD outlining its specific request for services. If CAWCD is willing to provide Additional Services, it shall submit an estimate of the cost for such services to AWBA within thirty days of the request. Prior to CAWCD providing Additional Services, CAWCD and the AWBA shall agree in writing on the manner and timing of reimbursement to be made to CAWCD by the AWBA for such services.

Cost of and Reimbursement for
Services Provided by ADWR

4. (a) The cost of the services provided to the AWBA by ADWR pursuant to Sections 2.b and 2.d above shall be calculated as follows:

(i) ADWR employees staffing the AWBA shall be charged at the rate of 100% of the full-time equivalents (Personal Service) plus the associated standard employee related expenses (ERE);

(ii) Legal services shall be charged at the rate of ½ of a full-time Attorney IV;

(iii) Costs for administrative services shall be calculated quarterly based on: (1) the actual costs of direct services provided for the appropriate quarter and; (2) the actual costs of indirect services as determined by multiplying the total of the actual amount for AWBA Personal Services and ERE by the indirect rate presented by ADWR in its annual cost rate proposal submitted to the United States government.

(b) The AWBA shall reimburse ADWR for staffing costs periodically throughout the year as those costs are incurred. The AWBA shall reimburse ADWR for all other services rendered pursuant to Sections 2.b and 2.d above through quarterly payments. Payment for all costs shall be completed via an automatic transfer from the administration account of the Arizona Water Banking Fund to the ADWR indirect fund.

Cost of and Reimbursement for

Services Provided by CAWCD

5. (a) The AWBA shall pay CAWCD a fixed fee of $23,000.00 per year for the services set forth in Section 3.b above.

(b) CAWCD shall submit an invoice to the AWBA for the $23,000.00 fixed fee within sixty days after the end of the calendar year. All invoices are due within thirty days of receipt.

Cooperative Activities and Joint Planning Process

6. (a) CAWCD, the AWBA and ADWR agree to meet and confer periodically throughout the year to discuss long-term CAP water supplies and long-term demands for such supplies.

(b) CAWCD and the AWBA agree to meet and confer periodically throughout the year regarding disbursement of tax revenues collected by CAWCD pursuant to A.R.S. § 48-3715.02 for AWBA activities.

(c) CAWCD and AWBA shall cooperate in the preparation of annual reports submitted to ADWR and shall agree on the accuracy of the reports before they are filed.

(d) ADWR shall determine and issue LTSCs to the AWBA in accordance with its normal operating procedures and shall annually accomplish this task in a reasonable amount of time, so as not to infringe on the operations of the AWBA. The AWBA shall not be entitled to preferential treatment from ADWR either in the timing or method through which entitlement to credits is analyzed.

(e) The Parties shall meet to develop a coordinated and cooperative process to address (1) the future distribution and use of water stored by the AWBA in accordance with A.R.S. § 45-2457, and (2) recovery of water stored by the AWBA in consideration of the water management objectives set forth in Title 45, Chapter 2, Arizona Revised Statutes. The Parties agree to meet periodically to review the process.

6.1 (a) To the extent there is interest earned on the Water Storage Tax funds, CAWCD agrees to make it available for payment of administrative costs incurred by the AWBA, limited to AWBA's approved administrative budget amount.

(b) Payments of the interest will be made upon request of the AWBA on a quarterly basis.

6.2 (a) AWBA and CAWCD shall confer in May of each year regarding the draft AWBA's Annual Report, and the projected Water Storage Tax.

(b) In preparing its draft Annual Report, the AWBA shall include the estimated amount of revenues it will seek from the Water Storage Tax for purchase of the projected target volume of LTSCs for CAP M&I firming, accounted for by County, during the following calendar year.

(c) Taking into consideration the draft Annual Report and the amount of estimated tax revenues, CAWCD and AWBA will agree on the amount available for the AWBA to request for the following calendar year. This amount is subject to approval by the CAWCD Board at its June meeting of the CAWCD Board of Directors and will be set forth in its annual resolution delivered to ADWR.

(d) When AWBA enters into an agreement for the purchase of LTSCs utilizing Water Storage Tax revenues and the agreement has been approved by the AWBA Commission, the AWBA will provide notice to CAWCD of the purchase agreement and a request to transfer the funds from the amount made available in 6.2 (c) above. The notice shall: (i) specify the total price paid for the purchase of LTSCs; and (ii) include a copy of the purchase agreement.

(e) The funds approved in the CAWCD Board resolution will carry over to subsequent years to be credited against future requests by the AWBA. Any amounts designated in a particular year pursuant to Section 6.2(c) above that have not been used for the purchase of LTSCs during that year, remain available to the AWBA to use for the purchase of LTSCs in subsequent years and will be credited against future requests.

(f) The AWBA shall provide to CAWCD evidence that the purchase of LTSCs has been completed as soon after completion of the purchase as practicable.

(g) If any Water Storage Tax revenues transferred to the Arizona Water Banking Fund remain in the AWBA fund account at the end of the year, those revenues will be used to offset future tax revenue requests.

(h) CAWCD has no obligation or liability to AWBA for transferred monies if it is unable to complete the purchase of LTSCs after CAWCD has transferred money to the Arizona Water Banking Fund pursuant to Section 6.2(c).

(i) If the AWBA determines additional funds are necessary for the purchase of additional LTSCs, CAWCD may amend its resolution to transfer additional funds subject to the terms and conditions set forth in this Section 6.2

6.3 Upon request by any Party, the Parties agree to conduct an "Agreed Upon Procedures" audit with respect to any use of Water Storage Tax revenues by or on behalf of the AWBA arising from this Agreement at the cost of the requesting party. An Agreed Upon Procedures audit engagement is one in which an independent practitioner is engaged by a client to issue a report of factual findings based on identified procedures of an audit nature performed on specific subject matter. Standards for conducting an Agreed Upon Procedures audit engagement are issued by the American Institute of Certified Public Accountants.

Resolution of Disputes

7. (a) This IGA shall be governed by and construed in accordance with applicable laws of the State of Arizona.

(b) The Parties shall attempt to resolve all claims, disputes, controversies, or other matters in question between the Parties arising out of, or relating to, this IGA ("Dispute") promptly, equitably, and in a good faith manner. Any Dispute arising out of this Agreement is subject to arbitration to the extent required by A.R.S. §12-133 and §12-1518. The prevailing Party in such arbitration may seek enforcement of such award in any court of competent jurisdiction. Each Party agrees to submit to the jurisdiction of any such court solely for purposes of the enforcement of such arbitration decision and for no other purpose.

(c) In the event that a dispute arises over the payment of money under the terms of this Agreement, the parties agree that, to the extent possible, payment should be made in timely fashion, but may be made under protest. That protest shall then be resolved according to the dispute resolution process provided for in this Agreement.

Designation of CAWCD as Third Party Beneficiary of AWBA's Recovery Rights

8. In any water storage agreement between the AWBA and the operator of an underground storage facility, the AWBA agrees to attempt to secure the inclusion of a clause that allows for the appointment of CAWCD as a third party beneficiary of the rights to recover water stored by the AWBA pursuant to the storage agreement.

Notice

9. (a) Any notice, demand or request authorized or required by this Agreement shall be in writing and shall be deemed properly served, given or made if delivered in person, by registered or certified mail, or by email to the persons specified below:

Central Arizona Water Conservation District
General Manager
P.O. Box 43020
Phoenix, AZ 85080-3020
Email: tcooke@cap-az.com

Arizona Water Banking Authority
Manager
1110 W Washington, Suite 410
Phoenix, Arizona 85007
Email: voconnell@azwater.gov

Arizona Department of Water Resources
Director
1110 W Washington, Suite 310
Phoenix, Arizona 85007
Email: tbuschatzke@azwater.gov

(b) A Party may, at any time, by notice to the other parties, designate different or additional persons or different addresses for the giving of notices.

Third Party Beneficiaries

10. This Agreement shall not be construed to create rights in, or to grant remedies to, any third party as a beneficiary of this Agreement or of any duty, obligation or undertaking established herein.

Waiver

11. The waiver by any Party of a breach of any term, covenant or condition in this Agreement 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 Agreement.

Headings

12. Title and paragraph headings are for reference only and are not part of this Agreement.

Miscellaneous

13. (a) The Parties shall comply with State Executive Order No. 75-5, as amended by State Executive Order No. 2009-9, and all other applicable Federal and State laws, rules and regulations relating to equal opportunity and non-discrimination, including the Americans with Disabilities Act.

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

(c) The Parties shall obtain and maintain all licenses, permits and authority necessary to perform their obligations pursuant to this IGA, and shall comply with all applicable state, federal and local laws, including but not limited to those regarding unemployment insurance, disability insurance and worker's compensation. This IGA does not relieve any Party from any obligation or responsibility imposed upon it by law.

(d) No Party shall be considered an officer, employee or agent of any Party. No monitoring or supervisory responsibility over the other Party's activities arises on the part of the other arises or as a result of, or pursuant to, this IGA other than as expressly provided herein.

(e) The provisions of this IGA are severable to the extent that if any provision is held unenforceable under applicable law, the remaining provisions of the IGA shall remain in effect.

(f) Each Party to this IGA is independently responsible in the event of its own negligence. Neither Party agrees to indemnify the other Party.

IN WITNESS WHEREOF, CAWCD, the AWBA and ADWR enter into this Agreement by signing below.

Attest:

CENTRAL ARIZONA WATER CONSERVATION DISTRICT

Sharon B Megdal

Secretary

By: Lisa A. Atkins

Lisa Atkins, President

Attest:

ARIZONA WATER BANKING AUTHORITY

_____

Secretary

By:_____

Thomas Buschatzke, Chair

ARIZONA DEPARTMENT OF WATER RESOURCES

By:_____

Thomas Buschatzke, Director

LEGAL DETERMINATION

Pursuant to A.R.S. § 11-952, the foregoing Intergovernmental Agreement has been submitted to the legal counsel of the Central Arizona Water Conservation District. The undersigned counsel has determined that said Agreement is in proper form and is within the powers and authority granted under the laws of the State of Arizona and to Central Arizona Water Conservation District.

Dated this 1st day of November, 2018

Central Arizona Water Conservation District
Jay M. Johnson, General Counsel

By: _____

Title: Gen. Counsel

LEGAL DETERMINATION

Pursuant to A.R.S. § 11-952, the foregoing Intergovernmental Agreement has been submitted to the legal counsel of the Arizona Department of Water Resources. The undersigned counsel has determined that said Agreement is in proper form and is within the powers and authority granted under the laws of the State of Arizona and to the Arizona Department of Water Resources.

Dated this ___ day of _____, 2018

Arizona Department of Water Resources
Kenneth C. Slowinski, Chief Counsel

By:_____

Title:_____

LEGAL DETERMINATION

Pursuant to A.R.S. § 11-952, the foregoing Intergovernmental Agreement has been submitted to the legal counsel of the Arizona Water Banking Authority. The undersigned counsel has determined that said Agreement is in proper form and is within the powers and authority granted under the laws of the State of Arizona and to the Arizona Water Banking Authority.

Dated this ___ day of _____, 2018

Arizona Water Banking Authority
Nicole Klobas, Deputy Chief Counsel

By:_____

Title:_____