

**Agenda Number 5.c.**

**CONTACT:** Jay Johnson  
623-869-2374  
jjohnson@cap-az.com

**MEETING DATE:** October 6, 2016

**AGENDA ITEM:** Approval of Agreement between CAWCD and the Arizona Water Banking Authority Providing for the Delivery of Excess Central Arizona Project Water and a Master Water Storage Agreement between CAWCD and the Arizona Water Banking Authority

**RECOMMENDATION:**

Staff recommends that the Board approve two agreements to allow for the delivery of excess water to the Arizona Water Banking Authority (AWBA) and for the storage of AWBA water at any of CAWCD's recharge facilities. The two agreements to be approved are: (1) the Agreement between CAWCD and AWBA Providing for the Delivery of Excess Central Arizona Project Water; and (2) a Master Water Storage Agreement between CAWCD and AWBA.

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**FINANCIAL IMPLICATIONS:** None

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**LINKAGE TO STRATEGIC PLAN, POLICY, STATUTE OR GUIDING PRINCIPLE:**

CAWCD Board of Directors 2016 Strategic Plan

- Water Supply: Reliability of the CAP Water Supply

**PREVIOUS BOARD ACTION/ACTIVITY:**

At the September 1, 2016, meeting of the CAWCD Board of Directors, these agreements were discussed by the CAP General Manager.

**ISSUE SUMMARY/DESCRIPTION:**

On July 1, 2002, AWBA and CAWCD executed a Master Water Storage Agreement. That agreement expires on December 31, 2016.

On July 14, 2005, AWBA and CAWCD entered into an Agreement Providing for the Delivery of Excess Central Arizona Project Water. That agreement expires on

December 31, 2017 or until sooner terminated. On September 9, 2016, AWBA staff notified CAWCD of the AWBA's intention to terminate the existing excess water contract in order to ensure that only one excess water agreement controls in 2017.

In order to continue providing excess water to AWBA for storage at CAWCD owned or operated facilities, CAWCD drafted (1) an Agreement between CAWCD and AWBA Providing for the Delivery of Excess Central Arizona Project Water and (2) a Master Water Storage Agreement between CAWCD and AWBA.

**SUGGESTED MOTION:**

I move that the Board approve the Agreement between CAWCD and AWBA Providing for the Delivery of Excess Central Arizona Project Water and a Master Water Storage Agreement between CAWCD and AWBA.

Attachments.

Excess Water Contract for  
CAP M&I Water

AGREEMENT BETWEEN THE CENTRAL ARIZONA  
WATER CONSERVATION DISTRICT AND  
THE ARIZONA WATER BANKING AUTHORITY  
PROVIDING FOR THE DELIVERY OF EXCESS  
CENTRAL ARIZONA PROJECT WATER

This Agreement is made as of the \_\_\_ day of \_\_\_\_\_, 2016, in pursuance generally of the Act of June 17, 1902 (32 Stat. 388), and acts amendatory thereof or supplementary thereto, including but not limited to the Boulder Canyon Project Act of December 21, 1928 (45 Stat. 1057), as amended, the Reclamation Project Act of August 4, 1939 (53 Stat. 1187), as amended, the Reclamation Reform Act of October 12, 1982 (96 Stat. 1263), and particularly the Colorado River Basin Project Act of September 30, 1968 (82 Stat. 885), as amended (the “Basin Project Act”), between the CENTRAL ARIZONA WATER CONSERVATION DISTRICT (“CAWCD”), and the ARIZONA WATER BANKING AUTHORITY (“AWBA”).

**RECITALS**

A. The Basin Project Act provides, among other things, that for the purposes of furnishing irrigation and municipal and industrial (“M&I”) water supplies to water deficient areas of Arizona and western New Mexico through direct diversion or exchange of water, control of floods, conservation and development of fish and wildlife resources, enhancement of recreation opportunities, and for other purposes, the Secretary shall construct, operate, and maintain the Central Arizona Project (“CAP”).

B. The United States and CAWCD have entered into Contract No. 14-06-W-245, amendment No. 1, dated December 1, 1988 (the “Repayment Contract”), which is

1 incorporated by reference, providing for the delivery of water and repayment of costs of the  
2 CAP.

3 C. The United States and CAWCD have entered into the Stipulation  
4 Regarding a Stay of Litigation, Resolution of Issues During the Stay and for Ultimate Judgment  
5 upon the Satisfaction of Conditions, filed with the United States District Court for the District  
6 of Arizona on November 21, 2007, in Central Arizona Water Conservation District v. United  
7 States, No. CIV 95-625-TUC-WDB (EHC), No. CIV 95-1720-PHX-EHC (Consolidated  
8 Action) (the “Stipulation”), which modifies the Repayment Contract in certain respects.  
9

10 D. Paragraph 5(d)(2) of the Stipulation grants CAWCD the exclusive right  
11 to sell or use Excess Water.

12 E. The Arizona Legislature has declared that it is the public policy of the  
13 State of Arizona to use the CAP to deliver Colorado River water that would otherwise be unused  
14 in Arizona for purposes specified in A.R.S. § 45-2401.

15 F. The Arizona Legislature has created AWBA to implement this policy  
16 and has specifically authorized AWBA, in A.R.S. § 45-2423(B)(7), to execute agreements with  
17 CAWCD to obtain water for storage at permitted facilities.  
18

19 **AGREEMENT**

20 Repayment Contract and Stipulation Controlling

21 1. AWBA expressly acknowledges that this Agreement is subject to the Repayment  
22 Contract and Stipulation including any amendments thereof, and any actions taken and  
23 determinations made under those agreements, except as otherwise provided herein. In the event  
24 of any inconsistency between this Agreement and the Repayment Contract, the provisions of  
25 the Repayment Contract, as modified by the Stipulation, shall be controlling. Definitions

1 included in the Repayment Contract and Stipulation are applicable to this Agreement. The first  
2 letters of terms so defined are capitalized herein.

3 \* \* \*

4 Term

5 2. The initial term of this Agreement expires on December 31 of the year in which  
6 it is executed. This Agreement will be automatically renewed for successive one-year terms  
7 until December 31, 2026, unless AWBA notifies CAWCD by October 1 of any year that it does  
8 not wish to renew the Agreement for the following year or unless sooner terminated in  
9 accordance with Article 12.  
10

11 Delivery of Water by CAWCD

12 3. In so far as Project Water supplies and the delivery capability of the Project will  
13 permit, and subject to the provisions of the Repayment Contract and Stipulation, CAWCD will  
14 deliver Excess Water to AWBA in an amount to be determined in accordance with the terms of  
15 this Agreement and at a water service charge calculated in accordance with Article 10. The  
16 determination of whether Excess Water is available for delivery in any Year, and, if so, the  
17 amount of such Excess Water that is available for delivery under this Agreement in any Year,  
18 is a determination within the exclusive discretion of CAWCD; Provided, however, That  
19 delivery of Excess Water under this Agreement shall be subject to the prior satisfaction of all  
20 water deliveries scheduled pursuant to a long-term contract or subcontract for Project Water  
21 service, as that term is used in the Stipulation.  
22

23 Conditions Relating to Delivery and Use

24 4. The delivery and use of water under this Agreement is conditioned on the  
25 following, and the parties hereby agree that:

1 (a) All uses of Project Water and Return Flow shall be consistent with  
2 Arizona water law unless such law is inconsistent with the Congressional directives applicable  
3 to the Central Arizona Project.

4 (b) Project Water furnished pursuant to this Agreement shall be delivered  
5 through Project Works for storage or exchange as permitted by law.

6 (c) Project Water furnished to AWBA pursuant to this Agreement may not  
7 be directly resold or transferred, but AWBA may enter into an arrangement with a groundwater  
8 savings facility allowed under state law to store Project Water and may otherwise transfer,  
9 assign, distribute, and extinguish long-term storage credits accrued with Project Water as  
10 authorized by A.R.S. §§ 45-2401, *et seq.*

11 (d) Notwithstanding any other provision of this Agreement, Project Water  
12 shall not be delivered on behalf of AWBA unless and until CAWCD has issued final  
13 environmental clearance for the system or systems through which Project Water is to be  
14 conveyed after delivery and CAWCD has satisfied itself that all pipelines, canals, distribution  
15 systems, or other conduits that will convey Project Water after delivery under this Agreement  
16 will prevent excessive conveyance losses and are constructed, operated, and maintained in  
17 accordance with any condition of applicable laws, regulations, or order and to the satisfaction  
18 of CAWCD.  
19  
20

21 Procedure for Ordering Water

22 5. (a) The amounts, times, and rates of delivery of Excess Water on behalf of  
23 AWBA during each Year shall be in accordance with a water delivery schedule for that Year.  
24 Such schedule shall be determined in the following manner:  
25

1 (i) On or about August 1 of each year during the term of this  
2 Agreement, AWBA and CAWCD shall meet and confer regarding the development of  
3 AWBA's draft plan of operation for the following year.

4 (ii) On or before September 1 of each year during the term of this  
5 Agreement, CAWCD shall provide to AWBA a preliminary schedule for delivery of Excess  
6 Water for storage for intrastate purposes during the following year.

7 (iii) On or before October 1 of each year during the term of this  
8 Agreement, AWBA shall provide to CAWCD written comments on the preliminary schedule  
9 for delivery of Excess Water during the following year. AWBA shall also identify the volume  
10 of Excess Water it anticipates storing for interstate purposes during the following year.

11 (iv) On or before October 15 of each year during the term of this  
12 Agreement, CAWCD shall provide to AWBA a water delivery schedule, by month and by  
13 storage facility, for intrastate storage. CAWCD shall also identify the volume of Excess Water  
14 it anticipates being available for storage for interstate purposes during the following year.

15 (v) On or before November 10 of each year during the term of this  
16 Agreement, AWBA shall submit to CAWCD a request for the delivery of Excess Water for  
17 interstate storage during the following year.

18 (vi) On or before November 15 of each year during the term of this  
19 Agreement, CAWCD shall provide to AWBA a final water delivery schedule for intrastate and  
20 interstate storage.

21 (b) The monthly water delivery schedules may be amended upon AWBA's  
22 written request to CAWCD. Proposed amendments shall be submitted by AWBA to CAWCD  
23 no later than 15 days before the desired change is to become effective. CAWCD shall accept  
24  
25

1 any request by AWBA to reduce scheduled deliveries and shall take all reasonable actions  
2 necessary to effect a request by AWBA to reduce scheduled deliveries. AWBA requests to  
3 increase scheduled deliveries shall be subject to review and modification in like manner as the  
4 schedule. CAWCD shall notify AWBA of its action on AWBA's requested schedule  
5 modification within 10 days of CAWCD's receipt of such request.

6 (c) AWBA shall hold CAWCD, its officers, agents, and employees,  
7 harmless on account of damage or claim of damage of any nature whatsoever arising out of or  
8 connected with the actions of CAWCD regarding water delivery schedules furnished by or to  
9 AWBA.

10 (d) CAWCD shall not deliver water on behalf of AWBA except in the  
11 amounts and in accordance with the schedules developed in accordance with this Article.  
12 AWBA shall not be responsible for any payments due CAWCD except for water scheduled and  
13 delivered in accordance with this Article.

14  
15 Project Delivery Point, Measurement  
16 and Responsibility for Distribution of Water

17 6. (a) Excess Water furnished on behalf of AWBA pursuant to this Agreement  
18 shall be delivered at such point(s) on the Water Supply System as are agreed upon in writing  
19 by CAWCD and AWBA.

20 (b) All water delivered from the Water Supply System shall be measured  
21 with equipment furnished and installed by the United States and operated and maintained by  
22 CAWCD or with equipment furnished, installed, operated and maintained with the approval of  
23 CAWCD. Upon the request of AWBA or CAWCD, the accuracy of such measurements shall  
24 be investigated by CAWCD and AWBA, and any errors which are mutually determined to have  
25



1 occurred therein shall be adjusted; Provided, however, That in the event the parties cannot agree  
2 on the required adjustment, CAWCD's determination shall be conclusive.

3 (c) Neither the United States nor CAWCD shall be responsible for the  
4 control, carriage, handling, use, disposal, or distribution of water beyond the Project delivery  
5 point except as provided in the Master Water Storage Agreement between AWBA and  
6 CAWCD. AWBA shall hold the United States and CAWCD harmless on account of damage  
7 or claim of damage of any nature whatsoever for which there is legal responsibility, including  
8 property damage, personal injury, or death arising out of or connected with the control, carriage,  
9 handling, use, disposal, or distribution of water beyond the Project delivery point, except as  
10 provided in the Master Water Storage Agreement between AWBA and CAWCD.  
11

#### 12 Interruptions and Reductions

13 7. In addition to the right of the United States under Subarticle 8.3(a)(iv) of the  
14 Repayment Contract to temporarily discontinue or reduce the amount of water to be delivered,  
15 CAWCD may discontinue or reduce the quantity of water to be furnished on behalf of AWBA  
16 as herein provided for the purposes of investigation, inspection, construction, testing,  
17 maintenance, repair, or replacement of any of the Project facilities or any part thereof. CAWCD  
18 may also discontinue or reduce the quantity of water to be furnished on behalf of AWBA if  
19 there is insufficient Project Water or Project delivery capacity to deliver AWBA's water order,  
20 the water orders of other contractors of Excess Water service, and all water deliveries scheduled  
21 pursuant to a contract with the United States or a subcontract with the United States and  
22 CAWCD providing for Project Water service for a period of 50 years or more. So far as feasible,  
23 CAWCD shall attempt to coordinate any such discontinuance or reduction with AWBA and to  
24 give AWBA due notice in advance of such discontinuance or reduction. In case of emergency,  
25

1 no notice need be given. The United States, its officers, agents, and employees, and CAWCD,  
2 its officers, agents, and employees, shall not be liable for damages when, for any reason  
3 whatsoever, any interruption, discontinuance, or reduction in delivery of water occurs.

4 No Long-Term Commitment to the Delivery of Project Water

5 8. Nothing in this Agreement shall be construed as an allocation of Project Water  
6 to AWBA, nor shall this Agreement entitle AWBA to any Project Water other than as provided  
7 herein.

8 Quality of Water

9 9. CAWCD does not warrant the quality of any Project Water furnished under this  
10 Agreement and is under no obligation to construct or furnish water treatment facilities to  
11 maintain or better the quality of any Project Water. AWBA waives its right to make a claim  
12 against the United States, CAWCD, or any other Project subcontractor or contractor on account  
13 of the quality of Project Water or any changes in water quality caused by the commingling of  
14 Project Water with other water during delivery of the Project Water. Water quality and liability  
15 issues that arise from the storage of Project Water by CAWCD on behalf of AWBA at CAWCD  
16 underground storage facilities shall be governed by the Water Storage Agreement between  
17 CAWCD and AWBA.

18 Water Service Charges

19 10. (a) By August 1 of each year, CAWCD shall establish water service charges  
20 for water to be delivered under this Agreement during the following year for interstate and  
21 intrastate storage.

22 (b) By the 20<sup>th</sup> of each month, CAWCD shall bill AWBA for water delivered  
23 in the preceding month under this Agreement. The payment due shall be computed by  
24  
25

1 multiplying the total amount of water delivered in the preceding month by that portion of the  
2 applicable water service charge that is not paid directly to CAWCD by Groundwater Savings  
3 Facility Operators in accordance with Article 12.

4 (c) AWBA shall pay or provide for payment of the amount billed by  
5 CAWCD within 30 days.

6 (d) If, during any year in which water is being delivered for interstate storage  
7 under this Agreement, CAWCD determines that its interstate water storage costs will increase  
8 20% or more over the estimates CAWCD used to establish the water service charge for  
9 interstate storage for that year, it shall within thirty (30) days of becoming aware of such  
10 increase: (1) notify AWBA in writing of the increase and (2) provide AWBA with an estimate  
11 of the increased costs for water delivery for interstate storage for that year. Following such  
12 notice, CAWCD shall give AWBA a reasonable opportunity to amend its interstate schedule  
13 for the remainder of that year.

14 (e) By May 31 of each year, CAWCD shall reconcile: (1) the actual quantity  
15 of water delivered for interstate storage during the previous year to the quantity of water prepaid  
16 by AWBA under Article 11 of this Agreement and (2) the actual operation, maintenance, and  
17 replacement costs and energy costs associated with water delivered for interstate storage to the  
18 costs estimated when the water service rate for interstate storage was established. If that year-  
19 end account reconciliation demonstrates that money is owed to CAWCD, AWBA shall pay the  
20 amount owed within 30 days of CAWCD's invoice. If funds are due to AWBA, CAWCD shall  
21 pay AWBA the amount due within 30 days of completing the reconciliation. Upon termination  
22 of this Agreement of any reason, CAWCD shall provide AWBA a reconciliation for any year  
23 or partial year for which a reconciliation has not been performed. The obligation to provide the  
24 reconciliation, and of either party to pay any funds as a result of the reconciliation, shall survive  
25 termination of this Agreement.

1 Interstate Storage Account

2 11. (a) AWBA may prepay CAWCD for water to be delivered under this  
3 Agreement for interstate storage.

4 (b) Any prepayments made by AWBA shall be deposited into a separate  
5 interstate storage account established and maintained by CAWCD.

6 (c) All interest earned on funds in the interstate storage account shall accrue  
7 to and remain in that account.

8 (d) CAWCD may only use funds in the interstate storage account to pay the  
9 costs of delivering and storing water for interstate storage under this Agreement.

10 (e) Any payment due from AWBA for water actually delivered for interstate  
11 storage under this Agreement shall be deducted from the interstate storage account until that  
12 account is exhausted.

13 (f) If funds are due to AWBA as a result of the year-end account  
14 reconciliation under subparagraph 10(e), CAWCD shall deposit the amount due in the interstate  
15 storage account.

16 (g) If funds are owed to CAWCD as a result of the year-end account  
17 reconciliation under subparagraph 10(e), CAWCD shall deduct the amount due from the  
18 interstate storage account. If there are insufficient funds in the interstate storage account to pay  
19 the full amount due CAWCD, then AWBA shall pay the balance owed within 30 days of  
20 CAWCD's invoice.

21 (h) Within fifteen days of AWBA's written request, CAWCD shall return  
22 all funds in the interstate storage account to AWBA.

23 Collection of Water Service Charges  
24 From Groundwater Savings Facility Recipients

25 12. (a) In accordance with the Intergovernmental Agreement entered into  
among AWBA, CAWCD, and the Arizona Department of Water Resources, CAWCD has

1 agreed to invoice, collect, and process that portion of the water services fees assessed under this  
2 Agreement that AWBA will charge to a Facility Operator of a Groundwater Savings Facility  
3 which receives water scheduled by AWBA under this Agreement. On or before October 15 of  
4 each year, AWBA shall notify CAWCD of the portion of the water services fee that it will  
5 charge to the Facility Operator. In any agreement with a Facility operator, AWBA shall require  
6 the Facility operator to make timely payment of such fees to CAWCD in accordance with  
7 normal CAWCD invoicing and billing practices, shall authorize CAWCD as a third party  
8 beneficiary to collect fees owed, as well as interest, administrative fees, and penalty charges on  
9 delinquent payments, and shall ensure that CAWCD's rights as a third party beneficiary to  
10 collect any unpaid fees, interest, and charges survive termination of the Agreement.

11 (b) CAWCD agrees that a Groundwater Savings Facility Operator shall be  
12 entitled to be reimbursed by CAWCD for any portion of the Facility Operator's water services  
13 fee that is attributable to water that is scheduled for delivery under this Agreement but that is  
14 not subsequently delivered to the Facility Operator. CAWCD agrees that in lieu of  
15 reimbursement for scheduled, but undelivered water, the Facility Operator shall be entitled to  
16 an equivalent credit against payment in the future of any fees owed CAWCD, should the  
17 Facility Operator so desire.

#### 18 Termination and Cancellation of Contract

19 13. (a) If AWBA remains in arrears in the payment of any charges due CAWCD  
20 for a period of 60 days or more, CAWCD may terminate this Agreement, which termination  
21 shall be effective 30 days after mailing written notice of termination to AWBA. AWBA shall  
22 remain obligated to pay all charges required to be paid under this Agreement during the time  
23 period until and including the date of termination. AWBA's obligation to pay any amounts due  
24 but unpaid as of the date of termination shall survive termination of this Agreement. CAWCD's  
25

1 right to terminate this Agreement as provided in this Article 13 shall be in addition to the other  
2 rights of CAWCD under this Agreement and to all other rights provided by law.

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

5 Charges for Delinquent Payments

6 14. (a) Each party to this Agreement shall be subject to interest, administrative  
7 and penalty charges on delinquent installments or payments owed by that party under this  
8 Agreement. The party shall pay an interest charge for each day the payment is delinquent  
9 beyond the due date. When a payment becomes 60 days delinquent, the party shall pay an  
10 administrative charge to cover additional costs of billing and processing the delinquent  
11 payment. When a payment is delinquent 90 days or more, the party shall pay an additional  
12 penalty charge of 6 percent per year for each day the payment is delinquent beyond the due  
13 date. Further, the party shall pay any fees incurred for debt collection services associated with  
14 a delinquent payment.

15 (b) The interest charge rate shall be the greater of the rate prescribed  
16 quarterly in the Federal Register by the Department of the Treasury for application to overdue  
17 payments, or the interest rate of 0.5 percent per month prescribed by Section 6 of the  
18 Reclamation Project Act of 1939 (Public Law 76-260). The interest charge rate shall be  
19 determined as of the due date and remain fixed for the duration of the delinquent period.

20 (c) When a partial payment on a delinquent account is received, the amount  
21 received shall be applied first to the penalty and administrative charges, second, to the accrued  
22 interest, and third to the overdue payment.

1 Rules, Regulations and Determinations

2 15. (a) The parties agree that the delivery of water or the use of Federal facilities  
3 pursuant to this Agreement is subject to Reclamation law, as amended and supplemented, and  
4 the rules and regulations promulgated by the Secretary of the Interior under Reclamation law.

5 (b) AWBA shall have the right to make determinations necessary to  
6 administer this Agreement that are consistent with the expressed provisions of this Agreement,  
7 the laws of the United States and the State of Arizona, and the rules and regulations promulgated  
8 by the Secretary of the Interior.

9 Compliance with Environmental Laws

10 16. The parties, in carrying out this Agreement, shall comply with all applicable  
11 environmental laws and regulations of the United States and the State of Arizona and shall  
12 obtain all required permits or licenses from the appropriate Federal, State or local authorities.

13 Equal Opportunity

14 17. During the performance of this Agreement, the parties shall comply with all  
15 applicable laws and regulations of the United States and the State of Arizona relating to labor,  
16 employment, civil rights, and equal opportunity in employment.

17 Notices

18 18. (a) Notice, demand, or request provided for in this Agreement shall be in  
19 writing and shall be deemed properly served, given or made if delivered in person or sent by  
20 mail, postage prepaid, or facsimile to the persons specified below:

21 Central Arizona Water Conservation District  
22 General Manager  
23 P.O. Box 43020  
24 Phoenix, AZ 85080-3020  
25 Facsimile Number: (623) 869-2332

Arizona Water Banking Authority  
Manager  
P.O. Box 36020

1 Phoenix, AZ 85067-6020  
2 Facsimile Number: (602) 771-8686

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

5 Assignment Limited—Successors and Assigns Obligated

6 19. The provisions of this Agreement shall apply to and bind the successors and  
7 assigns of the parties hereto, but no assignment or transfer of this Agreement or any right or  
8 interest therein shall be valid until approved in writing by both parties.

9 Annual Reporting Requirements

10 20. By May 31 of each Year, CAWCD shall provide to AWBA a report showing:

11 (a) The amount of water delivered for intrastate and interstate storage under  
12 this Agreement during the previous calendar year.

13 (b) The amount of money collected by CAWCD from Groundwater Savings  
14 Facility Operators in accordance with Article 12 during the previous calendar year.



1 IN WITNESS WHEREOF, the parties hereto have executed this Agreement No.  
2 \_\_\_\_\_ effective the day and year first above-written.

3  
4 CENTRAL ARIZONA WATER  
CONSERVATION DISTRICT

5  
6 Attest: \_\_\_\_\_  
7 Secretary

By: \_\_\_\_\_  
President

8 ARIZONA WATER BANKING  
9 AUTHORITY

10  
11 Attest: \_\_\_\_\_  
12 Secretary

By: \_\_\_\_\_  
Chair

13  
14  
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**DRAFT 9/22/16**

**MASTER WATER STORAGE AGREEMENT**

This Agreement is made as of the \_\_\_\_ day of \_\_\_\_\_, 2016, between the CENTRAL ARIZONA WATER CONSERVATION DISTRICT ("CAWCD"), and the ARIZONA WATER BANKING AUTHORITY ("AWBA").

**RECITALS**

- A. Pursuant to A.R.S. § 48-3713.B.5, CAWCD has the authority to acquire, develop, construct, operate, maintain and acquire permits for Underground Storage Facilities to store Excess Water.
- B. CAWCD has constructed and is operating a number of Underground Storage Facilities.
- C. AWBA has been created for the purposes set forth in A.R.S. §45-2401, which include, among others: (1) storing otherwise unused Arizona entitlement to Colorado river water within Arizona to meet future water needs within Arizona; and (2) providing the opportunity to the states of California and Nevada to store currently unused Colorado river water in Arizona to meet future needs in those states.
- D. AWBA and CAWCD have executed an Excess Water Contract, providing for, among other things the purchase of Excess Water by AWBA for storage at permitted underground storage facilities. The Excess Water Contract is incorporated by this reference.
- E. On July 1, 2002, CAWCD and AWBA executed a Master Water Storage Agreement ("Original Master Water Storage Agreement"). On September 19, 2006, CAWCD and AWBA executed Amendment No. 1 to the Original Master Water Storage Agreement. On October 4, 2011, CAWCD and AWBA executed Amendment No. 2 to the Original Master Water Storage Agreement.

F. The Original Master Water Storage Agreement expires on December 31, 2016. Upon the expiration of the Original Master Water Storage Agreement, CAWCD and AWBA desire to enter into this Master Water Storage Agreement to authorize AWBA to store Excess CAP Water at certain Underground Storage Facilities owned or operated by CAWCD in accordance with this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants herein contained, CAWCD and AWBA agree as follows:

1. **DEFINITIONS:**

1.1 "ADWR" means the Arizona Department of Water Resources.

1.2 "Authority Water" means Excess Water made available by CAWCD to AWBA on an annual basis for underground storage pursuant to the terms of the Excess Water Contract.

1.3 "CAWCD Underground Storage Facility(ies)" means those Underground Storage Facilities owned or operated by CAWCD and listed in Exhibit A. Exhibit A is incorporated by this reference and may, from time to time, be updated by the Parties.

1.4 "Excess Water" means that water defined as Excess Water in the Repayment Stipulation.

1.5 "Excess Water Contract" means the Excess Water Contract entered into by CAWCD and AWBA, dated \_\_\_\_\_.

1.6 "Party/Parties" means one or both of the parties to this Agreement.

1.7 "Repayment Stipulation" means the Stipulated Judgment and the Stipulation for Judgment (including any exhibits to those documents) entered on November 21, 2007, in the United States District Court for the District of Arizona in the consolidated civil action styled Central Arizona Water Conservation District v. United States, et al., and numbered CIV 95-625-TUC-WDB (EHC) and CIV 95-1720-PHX-EHC.

Definitions included in the Excess Water Contract are applicable to this Agreement. The first letters of terms so defined are capitalized herein.

2. **TERM OF AGREEMENT:**

2.1 This Agreement expires on December 31, 2026, unless sooner terminated or canceled in accordance with the provisions of this Agreement.

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

3. **CONDITIONS RELATED TO STORAGE:**

3.1 The storage of Authority Water at CAWCD Underground Storage Facilities under this Agreement is conditioned on the following and the Parties agree:

3.1.1 All storage of Authority Water shall be consistent with Arizona law.

3.1.2 AWBA shall obtain and maintain water storage permits from ADWR authorizing it to store Authority Water at CAWCD Underground Storage Facilities. AWBA shall be responsible for filing annual reports as required by the Water Storage Permits.

3.1.3 CAWCD's storage of Authority Water shall, at all times, comply with the Underground Storage Facility Permit issued by ADWR for that particular CAWCD Underground Storage Facility.

4. **PROCEDURE FOR SCHEDULING STORAGE CAPACITY:** The Parties shall schedule storage of Authority Water at CAWCD Underground Storage Facilities in accordance with the process and schedule established in Article 5 of the Excess Water Contract.

5. **WATER STORAGE CHARGES:**

5.1 The charges for water storage at CAWCD Underground Storage Facilities shall be set annually by the CAWCD Board of Directors.

5.2 AWBA shall pay the applicable water storage charge for each acre-foot of Authority Water scheduled and delivered to a CAWCD Underground Storage Facility and stored on behalf of AWBA. Payment of the applicable water storage charges is not

related to and is not contingent on AWBA's accrual of long-term storage credits from water stored under this Agreement.

5.3 On or before the 15<sup>th</sup> day of each month, CAWCD shall submit a bill to AWBA for water storage charges for Authority Water delivered to CAWCD Underground Storage Facilities and stored by CAWCD on behalf of AWBA during the previous month. AWBA shall pay CAWCD within thirty (30) days of receipt of such bill.

6. **OPERATING AGENT:**

6.1 CAWCD shall be responsible for operating and maintaining CAWCD Underground Storage Facilities.

6.2 CAWCD shall retain sole responsibility and authority for decisions relating to operating and maintenance practices at CAWCD Underground Storage Facilities, including maintenance scheduling and the selection of periods when maintenance will be done.

6.3 Whenever practicable, CAWCD shall inform AWBA ninety (90) days in advance of any matter which may substantially affect the storage of Authority Water at any CAWCD Underground Storage Facility.

7. **WATER MEASURING AND ACCOUNTING:**

7.1 CAWCD shall account for water delivered to CAWCD Underground Storage Facilities using actual measurements, methods required by the applicable underground storage facility permit and/or generally accepted accounting and engineering practices.

7.2 CAWCD shall install and maintain flow measurement systems to measure the amount of Authority Water diverted from the CAP into each CAWCD Underground Storage Facility, and shall maintain the accuracy of such systems within plus or minus 5 percent of actual flows.

7.3 CAWCD shall determine evaporation losses representative of the conditions at or near each CAWCD Underground Storage Facility using the method indicated in the applicable underground storage facility permit or using actual

measurements, when available. Any other losses at CAWCD Underground Storage Facilities shall be calculated using generally accepted engineering practices and water-level readings from the gauges in the basins.

7.4 CAWCD shall prepare a monthly water accounting report of Authority Water stored at each CAWCD Underground Storage Facility. The report shall include the daily amount of water stored and the losses calculated as described in this Section.

8. **WATER QUALITY:**

8.1 AWBA shall indemnify and hold harmless CAWCD against losses to third parties resulting from water quality degradation or harm to property caused by AWBA's water storage at any CAWCD Underground Storage Facility, due to the commingling of AWBA's infiltrating water with groundwater and/or other surface water, so long as CAWCD is in compliance with the monitoring requirements of the respective underground storage facility permit. Further, AWBA waives any claim on its own behalf against CAWCD for water quality degradation or harm to property arising from such commingling, so long as CAWCD is in compliance with the monitoring requirements of the respective underground storage facility permit, or unless such claim is intended to enforce the indemnification provision of this Section; provided, however, that AWBA shall indemnify and hold harmless CAWCD only to the extent that indemnification is not provided to CAWCD by the State of Arizona pursuant to A.R.S. § 45-898.01; and provided further, however, that AWBA's indemnification shall only extend to the percentage of degradation attributable to the water stored on behalf of AWBA at the CAWCD Underground Storage Facility at issue. AWBA retains the right to claim over against any other entity, including CAWCD, storing water in the CAWCD Underground Storage Facility at issue in the amount proportionate to such amount stored by those other entities. In no event shall CAWCD assume liability for water quality degradation resulting from the storage of Authority Water at CAWCD Underground Storage Facilities, solely due to its performance of obligations as the operating agent under this Agreement.

9. **AUTHORIZATIONS AND APPROVALS:** AWBA shall be responsible for obtaining, at its own expense, any permits, authorizations and approvals required for the underground storage of Authority Water at CAWCD Underground Storage Facilities or for AWBA's performance under this Agreement. AWBA shall keep CAWCD informed of its applications for such permits and authorizations. CAWCD will share information with AWBA to assist AWBA in its permit applications. AWBA shall also be responsible for filing any annual reports or other documents necessary to maintain its right to store Authority Water at CAWCD Underground Storage Facilities.

10. **LIABILITY:**

10.1 Each Party shall assume liability for its own negligence and shall indemnify the other against any damages the non-negligent Party incurs as a result of the negligent Party's action or inaction.

10.2 CAWCD shall assume no liability to AWBA for claims of damage resulting from CAWCD's decision to curtail or stop water flows to any CAWCD Underground Storage Facility.

10.3 CAWCD shall assume no liability to AWBA for quantities of recoverable or unrecoverable water stored underground or removed from underground storage; nor to replace water lost, unintentionally misdirected or otherwise failing to reach the underlying aquifer for any reason except an intentional act by CAWCD. CAWCD, AWBA and any other lessee of CAWCD Underground Storage Facility experiencing the type of water losses described in this Section shall share in any deficiency resulting from such lost, misdirected or otherwise unstored water in proportion to the amount of the storage capacity utilized at such facility in any given year.

10.4 Liability, as described in Section 8, related to Authority Water stored in CAWCD Underground Storage Facilities prior to the termination of this Agreement shall remain with AWBA after termination of this Agreement. This Section 10.4 shall survive expiration or termination of this Agreement, and remain in full force and effect.

11. **DEFAULT:**

11.1 CAWCD and AWBA shall pay all monies and carry out all other performances, duties and obligations agreed to be paid and/or performed by them pursuant to this Agreement. A default by CAWCD or AWBA in the covenants and obligations to be kept and performed by it shall be an act of default under this Agreement.

11.2 In the event of a default by CAWCD or AWBA, then, within thirty (30) days following notice of such default by the non-defaulting party, the defaulting party shall remedy such default either by advancing the necessary funds and/or rendering the necessary performance. Such notice shall specify the existence and nature of such default. If such default is not remedied within the time specified, the non-defaulting party may terminate this Agreement upon twenty-four (24) hours written notice.

12. **UNCONTROLLABLE FORCES:** Neither Party to this Agreement shall be considered in default in the performance of any of its obligations under this Agreement (other than the obligation of AWBA to make payment under this Agreement) when a failure of performance 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, terrorism, riot, civil disturbance or disobedience, strike, labor dispute, labor or material shortage, sabotage, government priorities and restraint by court order or public authority, and action or non-action by, or failure to obtain the necessary authorizations or approvals from any governmental agency or authority, which by exercise of due diligence such Party could not reasonable have been expected to avoid and which be 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.



13. **RESOLUTION OF DISPUTES:**

13.1 A Party having a dispute under this Agreement that cannot be resolved by the Parties, may submit the dispute to arbitration. Arbitration shall be subject to the following provisions:

13.1.1 Arbitration shall be binding only upon the consent of the Parties.

13.1.2 A Party wishing to submit a dispute to arbitration shall provide thirty (30) day written notice to the other Party of its intent to pursue arbitration and shall name one arbitrator at that time. Within fifteen (15) days of receiving this notice, the other Party to the dispute shall name one arbitrator and give written notice to the other Party of its selection. The two selected arbitrators shall, within five (5) days of selection of the second arbitrator, jointly select a third arbitrator.

13.1.3 Within thirty (30) days from the selection of the third arbitrator, the arbitrators shall hold a hearing. Within thirty (30) days from the conclusion of the hearing the arbitrators shall render a decision on the dispute.

13.1.4 Arbitration shall be subject to the Arizona Arbitration Act, Arizona Revised Statutes, Title 12, Chapter 9, Article 1. In the event of a conflict between this Agreement and the Act, the provisions of this Agreement shall prevail.

13.2 A Party that is dissatisfied with the results of non-binding arbitration may pursue any other legal or equitable remedy not expressly provided for in this Section and available to resolve the dispute.

14. **ACTIONS PENDING RESOLUTION OF DISPUTES:** Pending the resolution of a dispute pursuant to Section 13, each Party shall proceed, to the extent legally permissible, in a manner consistent with this Agreement, and shall make payments required in accordance with the applicable provisions of this Agreement. Any amount paid by a Party pursuant to this Section during the pendency of such dispute shall be subject to refund and adjustment upon a final resolution of any dispute involving an amount due.

15. **GOVERNING LAW:** This Agreement shall be governed by the laws of the State of Arizona.

16. **BINDING OBLIGATIONS:** All of the obligations set forth in this Agreement shall bind CAWCD and its successors and assigns. This Agreement shall not be assigned by AWBA or accrue to AWBA's successor, nor shall any CAWCD Underground Storage Facility storage capacity use rights under this Agreement be used by another party. This Agreement shall not be assigned by CAWCD or accrue to CAWCD's successor without the express written consent of AWBA.

17. **NOTICES:** Except as otherwise required by law, any notice given in connection with this Agreement must be in writing and must be given by personal delivery, overnight delivery, facsimile, or United States certified or registered mail. Any such notice must be addressed to the appropriate party at the following address (or at any other address as a party may hereafter designate by written notice given as required by this paragraph):

**CAWCD:**

For delivery use: c/o General Manager  
23636 N. 7<sup>th</sup> Street  
Phoenix, AZ 85024

For U.S. Mail use: c/o General Manager  
P.O. Box 43020  
Phoenix, AZ 85080-3020

**AWBA:**

For delivery and  
for U.S. Mail use: c/o Manager  
P.O. Box 36020  
Phoenix, AZ 85067-6020

Notice is deemed to have been given on the date on which notice is personally delivered, delivered to an overnight delivery service, transmitted by facsimile or mailed. Notice is

deemed to have been received on the date on which the notice is actually received or delivery is refused.

18. **THIRD PARTY BENEFICIARIES:** 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.

19. **WAIVER:** The waiver by either 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.

20. **ENTIRE AGREEMENT:** The terms, covenants and conditions of this Agreement constitute the entire agreement between the Parties relative to the use of CAWCD Underground Storage Facilities storage capacity, and no understandings or agreements not herein expressly set forth shall be binding upon them. This Agreement may not be modified or amended in any manner unless in writing and signed by both Parties.

21. **CANCELLATION:** This Agreement is subject to cancellation in accordance with the provisions of A.R.S. § 38-511.

22. **NON-DISCRIMINATION:** 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.

IN WITNESS WHEREOF, the Parties have executed this Agreement effective the day and year first above-written.

CAWCD:      **CENTRAL ARIZONA WATER CONSERVATION DISTRICT**

By: \_\_\_\_\_  
                Lisa Atkins, President

ATTEST: \_\_\_\_\_  
                Sharon Megdal, Secretary

AWBA:      **ARIZONA WATER BANKING AUTHORITY**

By: \_\_\_\_\_  
                Thomas Buschatzke

ATTEST: \_\_\_\_\_  
                Kathryn Sorensen, Secretary

## APPENDIX A

<b>Permit Number</b>	<b>Facility Name</b>
71-569776.0007	AGUA FRIA CONSTRUCTED
71-569775.0006	AGUA FRIA MANAGED
71-584466.0003	HIEROGLYPHIC MTNS RECHARGE PROJECT
71-207702.0002	SUPERSTITION MOUNTAINS RECHARGE PROJECT
71-593305.0002	TONOPAH DESERT RECHARGE PROJECT
71-561366.0003	LOWER SANTA CRUZ RECHARGE PROJECT
71-577501.0002	PIMA MINE ROAD