

**PURCHASE AND SALE AGREEMENT
FOR
LONG TERM STORAGE CREDITS**

This Purchase and Sale Agreement (Agreement) is made this ____ day of _____, 2018, (the “Effective Date”), between the Arizona Water Banking Authority (“AWBA”), an authority established under Chapter 14, Title 45 of the Arizona Revised Statutes (“A.R.S.”), added by Law 1996, Ch. 308, § 16, effective April 30, 1996, and the Ak-Chin Indian Community (“Ak-Chin”), a federally recognized Indian tribe.

RECITALS

A.The AWBA desires to purchase Long-Term Storage Credits developed by Ak-Chin pursuant to A.R.S. §§ 45-801 *et seq.*, for the benefit of meeting the AWBA’s storage goals.

B.Ak-Chin is willing to sell and transfer certain Long-Term Storage Credits to AWBA upon the price, terms and conditions set forth herein.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are acknowledged, and intending to be legally bound, the parties hereby agree as follows:

**ARTICLE 1
DEFINITIONS**

As used in this Agreement, the following terms, when capitalized, shall mean:

- 1.“ADWR” means the Arizona Department of Water Resources.
- 2.“Agreement” means this Purchase and Sale Agreement for Long-Term Storage Credits.
- 3.“AWBA” means the Arizona Water Banking Authority established by A.R.S. § 45-2421 or its successor.
- 4.“AWBA’s Long-Term Storage Account” means the account established pursuant to A.R.S. § 45-852.01 in the AWBA’s name and account number 70-441150.0000.
- 5.“Long-Term Storage Credit” is as defined in A.R.S. § 45-802.01(11).

6. “Long-Term Storage Credit Transfer Form” is a form, approved by ADWR, to effectuate the assignment of Long-Term Storage Credits, as defined in A.R.S. § 45-854.01(B), and more specifically described in Article 3 below.

7. “Ak-Chin” means the Ak-Chin Indian Community.

8. “Ak-Chin's Long-Term Storage Account” means the Phoenix AMA Long-Term Storage account established pursuant to A.R.S. § 45-852.01 in Ak-Chin’s name and Account No. 70-441244.0000.

ARTICLE 2 PURCHASE OF LONG-TERM STORAGE CREDITS

1. Sale and Purchase. Subject to the terms and conditions of this Agreement, Ak-Chin agrees to sell, transfer and assign and AWBA agrees to purchase, acquire, and pay for up to 6,600 acre-feet per annum of Long-Term Storage Credits. The Long-Term Storage Credits that Ak-Chin agrees to sell and AWBA agrees to purchase during the term of this Agreement shall be determined annually through mutual agreement.
2. Type of Water. It is the intent of the parties that all Long-Term Storage Credits purchased and sold under this Agreement shall retain the identity of the source of water used to generate such Long-Term Storage Credits.
3. Long-Term Storage Credits. The Long-Term Storage Credits to be sold by Ak-Chin were stored at the underground storage facility(s), under the ADWR Facility and Water Storage Permit(s) set forth in Exhibit A hereto. The Parties acknowledge that Exhibit A may be amended from time to time during the term of this Agreement to reflect amendments to existing underground storage facility permits or to add new permitted underground storage facilities.
4. Annual Purchase Price. The annual purchase price for the Long-Term Storage Credits to be transferred pursuant to this Agreement will vary from year to year and shall be based on components of the Central Arizona Project (“CAP”) published annual rate schedule. The purchase price for 3,600 acre-feet of Long-Term Storage Credits to be sold by Ak-Chin under this Agreement in 2018 is \$ 834,876.00 calculated using the formula described in Section 2.5 below.
5. Purchase Price Formula. The per-credit purchase price for the applicable year is calculated as follows: Per-credit price = [(CAP Long Term M&I Subcontract Capital Charge + CAP Fixed OM&R Charge + CAP Pumping Energy Rate Charge + CAP Underground Water Storage O&M Charge for the Phoenix AMA) / 0.94]. As expressed

in numbers reflecting 2018 Final CAP rates, the formula is as follows: $[(\$45 + \$95 + \$65 + \$13) / 0.94 = \$231.91]$.

ARTICLE 3 TIME AND MANNER OF TRANSFER

1. Long-Term Storage Credit Transfer Form. To evidence the transfer of Long-Term Storage Credits, Ak-Chin and AWBA shall complete, sign and deliver the Long-Term Storage Credit Transfer Form to ADWR upon full execution of this Agreement. A copy of the Long-Term Storage Credit Transfer Form is attached as Exhibit B to this Agreement. Ak-Chin shall execute and deliver the signed Long-Term Storage Credit Transfer Form with its acceptance and execution of this Agreement., AWBA shall deliver the fully executed Long-Term Storage Credit Transfer Form to ADWR within seven (7) business days of its receipt from Ak-Chin.
2. Additional Actions and Documentation. AWBA shall pay any administrative fees established by ADWR to effectuate the transfer of Long-Term Storage Credits into AWBA's Account. The parties shall cooperate to take such further actions and execute such further documents as may be determined by either party to be necessary or advisable in order to complete the transfer of the Long-Term Storage Credits contemplated by this Agreement.

ARTICLE 4 COMPLETION OF DELIVERY AND PAYMENT

1. Completion of Delivery. Delivery of the Long-Term Storage Credits to be transferred pursuant to this Agreement shall be deemed complete when ADWR notifies AWBA in writing that it has received and accepted the Long-Term Storage Credit Transfer Form and intends to transfer Long-Term Storage Credits from Ak-Chin's Long-Term Storage Account to AWBA's Account ("ADWR Acceptance"). AWBA and Ak-Chin shall cooperate with ADWR to facilitate completion of such transfer by ADWR. AWBA will forward to Ak-Chin copies of any notifications it receives from ADWR.
2. Payment. Upon ADWR Acceptance, Ak-Chin shall invoice the AWBA the full annual purchase price as specified in Article 2.4 for 2018 and calculated in Article 2.5 above for subsequent years. AWBA shall pay the full amount of the annual purchase price within thirty (30) calendar days of receipt of the invoice.
3. Non-availability of Funds. Every payment obligation of the State under this Agreement is conditioned upon the availability of funds appropriated or allocated for the payment of such obligations. If funds are not allocated and available for the continuance of the

Agreement, this Agreement may be terminated by the State at the end of the period for which funds are available. No liability shall accrue to the State in the event this provision is exercised, and the State shall not be obligated or liable for any future payments or for any damages as a result of termination under this paragraph. In the event the State has to terminate this Agreement because the funds are not available, if such were to occur after Ak-Chin has transferred Long-Term Storage Credits and did not receive payment for such, AWBA shall transfer and assign back to Ak-Chin the number of credits affected by any such lack of funds transfer. AWBA's obligation to refund any credits under this Agreement shall be completed thirty (30) calendar days after AWBA receives notification that such funds are not available.

ARTICLE 5 REJECTION OR INVALIDATION OF TRANSFER

If ADWR, pursuant to A.R.S. § 45-854.01(C), rejects or invalidates any transfer or assignment of Long-Term Storage Credits made hereunder before AWBA has paid for such Long-Term Storage Credits, AWBA shall not be obligated to pay for the number of Long-Term Storage Credits affected by such rejection or invalidation. If such rejection or invalidation occurs after payment has been made by AWBA, Ak-Chin shall refund an amount equal to the number of Long-Term Storage Credits affected by such rejection or invalidation times the price per acre-foot for the affected Long-Term Storage Credits, as such price is established in Article 2.5 above. Ak-Chin shall refund such amount within thirty (30) business days after either AWBA or Ak-Chin receives any notice of rejection or invalidation from ADWR. AWBA shall transfer and assign back to Ak-Chin the number of credits affected by any such rejection or invalidation. Ak-Chin's obligation to refund any payments under this Article 5 shall expire thirty (30) calendar days after ADWR has issued a non-appealable final agency decision approving the transfer and assignment of the Long-Term Storage Credits into the AWBA Account. The Parties' rights and obligations under this Article 5 shall remain in full force and effect, and shall survive termination of this Agreement for purposes of addressing a circumstance where ADWR rejects or invalidates any transfer of Long-Term Storage Credits made hereunder.

ARTICLE 6 EFFECTIVE DATE AND TERM

This Agreement shall be effective as of the date set forth in the introductory paragraph of this Agreement (the "Effective Date") and shall stay in effect three (3) years from the effective date of this agreement, unless the parties agree to extend this Agreement, or terminate this Agreement and in any case all provisions under the Agreement have been met unless it is terminated earlier.

ARTICLE 7
DEFAULT AND REMEDIES

1. Default. The occurrence of any of the following events constitutes an event of default by a party to this Agreement:
 - a. The failure of either party to perform any term, covenant, or condition of this Agreement, if that failure continues for thirty (30) days following the receipt of written notice from the other party.
 - b. (i) The filing by or against either party of a petition to have the party adjudged a bankrupt or a petition for reorganization or arrangement under any law relating to bankruptcy (unless, in the case of a petition filed against a party, the same is dismissed within sixty (60) days); (ii) the making by a party of any general assignment for the benefit of creditors; (iii) the appointment of a trustee or receiver to take possession of substantially all of the party's assets, when possession is not restored to the party within sixty (60) days; or (iv) the attachment, execution, or other judicial seizure of substantially all of a party's assets, where such seizure is not discharged within sixty (60) days.
2. Remedies. If the event default occurs, the non-defaulting party may immediately terminate this Agreement by written notice to the defaulting party and/or may pursue any other rights available in law or equity. The obligation of the defaulting party to pay any amounts due but unpaid or refund any credits previously transferred but unpaid of the date of termination under this provision shall survive such termination.

ARTICLE 8
MISCELLANEOUS PROVISIONS

1. Interpretation. This Agreement is governed by and must be construed and interpreted in accordance with and in reference to the laws of the State of Arizona, without regard to its conflicts of law provisions. Any action to resolve any dispute regarding this Agreement shall be taken in a state court of competent jurisdiction located in Maricopa County, Arizona.
2. No Third-Party Beneficiaries. This Agreement is solely for the benefit of the parties and does not create, nor shall it be construed to create, rights in any third party unless expressly provided herein. No third party may enforce the terms and conditions of this Agreement.
3. Conflict of Interest. The parties to this Agreement are hereby notified of A.R.S. § 38-511.

4. Permits. The parties shall obtain and maintain all licenses, permits and authority necessary to perform their obligations pursuant to this Agreement. This Agreement does not relieve either party from any obligation or responsibility imposed upon it by law.
5. No Employment. Neither party shall be considered an officer, employee, or agent of the other. 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 Agreement other than as expressly provided herein.
6. Severability. The provisions of this Agreement are severable to the extent that if any provision is held unenforceable under applicable law, the remaining provisions of the Agreement shall remain in effect, if the intent of the Agreement can be accomplished.
7. Indemnification. Each party to this Agreement is independently responsible in the event of its own negligence. Neither party agrees to indemnify the other party.
8. Resolution of Disputes. 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 Agreement ("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.
9. Amendments. This Agreement may be modified, amended or revoked only by the express written agreement of the parties hereto.
10. Entire Agreement. This Agreement constitutes the entire agreement between the parties and no understandings or obligations not expressly set forth in this Agreement are binding upon the parties.
11. Waiver. No delay in exercising any right or remedy shall constitute a waiver unless such right or remedy is waived in writing signed by the waiving party. A waiver by any party of any right or remedy hereunder shall not be construed as a waiver of any other right or remedy, whether pursuant to the same or a different term, condition or covenant.
12. Captions. All captions, titles, or headings in this Agreement are used for the purpose of reference and convenience only and do not limit, modify, or otherwise affect any of the provisions of this Agreement.

13. Rules, Regulations and Amendment or Successor Statutes. All references in this Agreement to the Arizona Revised Statutes include all rules and regulations promulgated by ADWR under such statutes and all amendment statutes and successor statutes, rules, and regulations to such statutes, rules, and regulations existing as of the date of this Agreement.
14. 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, United States mail, or email. Any such notice must be addressed to the appropriate party at the following address and/or email (or at any other address as a party may hereafter designate by written notice given as required by this paragraph):

AWBA:

For personal delivery: Manager
 Arizona Water Banking Authority
 1110 W. Washington St., Suite 310
 Phoenix, AZ 85007

For U.S. Mail/email: Manager
 Arizona Water Banking Authority
 P.O. Box 36020
 Phoenix, Arizona 85067-6020
 voconnell@azwater.gov

Ak-Chin Indian Community:

For U.S. Mail/email: Ak-Chin Indian Community
 42507 West Peters & Nall Rd.
 Maricopa, Arizona 85138
 Attn: Tribal Chairman

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

IN WITNESS WHEREOF, the parties to this Agreement have executed this Agreement as of the date first set forth above.

ARIZONA WATER BANKING AUTHORITY

By: _____
Thomas Buschatzke
Its: Chairperson

ATTEST: _____
Kathryn A. Sorensen
Secretary

AK-CHIN INDIAN COMMUNITY, a federally recognized Indian tribe.

By: _____
Robert Miguel
Its: Chairman

APPROVED AS TO FORM: _____

ATTEST: _____

EXHIBIT A
to
Purchase and Sale Agreement for Long Term Storage Credits

LONG-TERM STORAGE CREDITS

Facility Name	ADWR Facility Permit No.	ADWR Water Storage Permit No.	ADWR Long-Term Storage Account No.	Credits (AF)	Water Source
Hieroglyphic USF	71-584466	73-584466.1900	70-441244	943.10	CAP
Hieroglyphic USF	71-584466	73-584466-0800	70-441244	94.31	CAP
Hassayampa USF	71-216387	73-216387.0600	70-441244	856.90	CAP
SRP GSF	72-553133	73-533133.1900	70-441244	960.89	CAP
MWD GSF	72-441244	73-558246.0700	70-441244	744.80	CAP

EXHIBIT B
to
Purchase and Sale Agreement for Long Term Storage Credits

ADWR LONG-TERM STORAGE CREDIT TRANSFER FORM A.R.S. § 45-854.01