

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 15th 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. 7th 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.

APPENDIX A

Permit Number	Facility Name
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