**INTERGOVERNMENTAL AGREEMENT**

**AMONG**

**ARIZONA DEPARTMENT OF WATER RESOURCES,**

**ARIZONA WATER BANKING AUTHORITY AND**

**CENTRAL ARIZONA WATER CONSERVATION DISTRICT**

**AMENDMENT NO. 2**

This Amendment No. 2 to the Intergovernmental Agreement Among the Arizona Department of Water Resources ("ADWR"), the Arizona Water Banking Authority (the "Authority" or "AWBA") and the Central Arizona Water Conservation District ("CAWCD") is made this \_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 2015.

**RECITALS**

1. ADWR, the Authority and CAWCD have entered into an "Intergovernmental Agreement Among Arizona Department of Water Resources, Arizona Water Banking Authority and the Central Arizona Water Conservation District" dated January 28, 2009 (the "IGA").
2. The Authority was granted additional authority in 2014 to purchase Long-term Storage Credits.
3. In response to this expanded authority, ADWR, the Authority and CAWCD have entered into an Amendment No. 1 to the IGA dated November 13, 2014.
4. CAWCD is now seeking legislation to extend the expiration date of CAWCD’s annual tax levy pursuant to A.R.S. § 48-3715.02.B and C beyond the current expiration date of January 1, 2017.
5. The parties desire to enter into this Amendment No. 2 to the IGA to clarify further the procedures and responsibilities of the parties related to the Authority's purchase of Long-term Storage Credits using monies collected pursuant to A.R.S. § 48-3715.02.B and C under CAWCD's current authority and under any future authority.

**AGREEMENT**

1. Amendment of Section 1. Section 1 of the IGA is hereby amended to read as follows:

“1. (a) This Agreement shall commence on the date that it is filed with the Arizona Secretary of State and shall remain in effect until December 31, 2018, unless otherwise terminated or cancelled in accordance with this Section.

(b) Notwithstanding subsection 1(a) above, Section 6.2 and 6.4 of this Agreement shall remain in effect until: (i) all taxes that are levied pursuant to A.R.S. § 48-3715(B) and (C) have been expended; (ii) the term of this Agreement is extended as contemplated in Section 6.3 below, or (iii) this Agreement is otherwise amended, whichever occurs first.

(c) This Agreement may be terminated upon sixty (60) days written notice by any party. If Section 6.2 of this Agreement extends beyond December 31, 2018, pursuant to subsection 1(b) above, Section 6.2 may be terminated upon sixty (60) days written notice by any party.

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

1. Amendment of Section 6. Section 6 of the IGA is hereby amended to read as follows:

## "6.1 (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 to discuss CAWCD’s annual tax levy pursuant to A.R.S. § 48-3715.02.B and C and the disbursement of monies collected under that tax pursuant to A.R.S. § 48-3715.03.

(c) AWBA shall confer with CAWCD in the preparation of the Annual Plan of Operation.

(d) 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.

(e) ADWR shall determine and issue long-term storage credits 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.

(f) The parties shall meet periodically to develop a coordinated and cooperative planning process which addresses, but is not limited to, the following issues: (1) the future distribution and use of water stored by the AWBA, and (2) recovery of water stored by the AWBA and CAWCD in consideration of the water management objectives set forth in Title 45, Chapter 2, Arizona Revised Statutes.

6.2 (a) In preparing its draft Plan of Operation each year, the AWBA shall confer with CAWCD and ADWR regarding its plans to purchase Long-term Storage Credits. The draft Plan of Operation shall include: (i) a projection of the target volume of Long-term Storage Credits to be purchased by the AWBA during the following calendar year (the "Plan Year"); (ii) a projection of the cost of acquiring those Long-term Storage Credits; and (iii) the funding sources projected to be used by the AWBA to purchase Long-term Storage Credits, including a projection of the amounts needed from each funding source.

(b) After reviewing the annual draft Plan of Operation, CAWCD staff, in consultation with the AWBA staff, will identify for the CAWCD Board the amount of revenues from the tax to be levied pursuant to A.R.S. § 48-3715.02 ("4-cent tax revenues") during the Plan Year, accounted for by County, that the AWBA is requesting be made available for the purchase of Long-term Storage Credits during the Plan Year. No later than the December CAWCD Board meeting preceding the Plan Year, the CAWCD Board shall establish the amount of 4-cent tax revenues that will be available to the AWBA during the Plan Year for the purchase of Long-term Storage Credits, accounted for by County, (the "Long-term Storage Credit Amount"), subject to the satisfaction of the terms and conditions set forth in Sections 6.2(c), 6.2(d), 6.2(e), 6.2(f), 6.2(g) and 6.2(h) of this IGA.

(c) If, during the Plan Year, the AWBA enters into an agreement for the purchase of Long-term Storage Credits utilizing 4-cent tax revenues which have been set aside pursuant to Section 6.2(b) above, and the agreement has been approved by the AWBA Commission, the AWBA will provide notice to CAWCD of the purchase agreement and request that the purchase be funded by transferring 4-cent tax revenues to the Arizona Water Banking Fund. The notice shall: (i) specify the total price to be paid for the purchase of Long-term Storage Credits; and (ii) include a copy of the purchase agreement.

(d) After receipt of a notice satisfying the requirements of Section 6.2(c), CAWCD will amend the resolution adopted in June of the year preceding the Plan Year pursuant to A.R.S. § 48-3715.03, to transfer 4-cent tax revenues to the Arizona Water Banking Fund in the amount requested by the AWBA for the purchase of Long-term Storage Credits, not to exceed the Long-term Storage Credit Amount. After the monies are deposited in the Arizona Water Banking Fund, the AWBA shall promptly transfer the monies out of the Fund to the seller of the Long-term Storage Credits.

(e) CAWCD Board authorization pursuant to Section 6.2(b) does not carry over to subsequent years. Any amounts set aside for a particular Plan Year pursuant to Section 6.2(b) that have not been transferred by December 31st of that Plan Year remain available to CAWCD to use for the purposes identified in the resolution adopted in June of the year preceding the Plan Year pursuant to A.R.S. § 48-3715.03.

(f) The AWBA shall provide to CAWCD evidence that the purchase of Long-term Storage Credits has been completed as soon after completion of the purchase as practicable.

(g) Unless otherwise agreed to by the AWBA and CAWCD, if CAWCD transferred 4-cent tax revenues to the Arizona Water Banking Fund, and the transaction for the purchase of Long-term Storage Credits is not finalized, the AWBA shall return to CAWCD those transferred 4-cent revenues associated with the ineffective purchase transaction.

(h) CAWCD has no liability if AWBA is unable to complete the purchase of Long-term Storage Credits after CAWCD has transferred money to the Arizona Water Banking Fund pursuant to Section 6.2(d).

6.3 The Parties agree to meet and confer as soon as possible regarding the extension of this IGA beyond December 31, 2018, and specifically commit to addressing the question of the continued and long-term use of the tax levied pursuant to A.R.S. § 48-3715.02 to support the annual operations of the AWBA.

6.4 The Parties agree to conduct an "Agreed Upon Procedures" audit annually with respect to any use of 4-cent tax revenues by or on behalf of the AWBA arising from this Agreement. 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."

1. Except as amended, all terms, conditions, and provisions of the IGA shall remain unchanged and in full force and effect.
2. This Amendment No. 2 shall become effective immediately.

IN WITNESS WHEREOF, ADWR, the AWBA and CAWCD enter into this Amendment No. 1 to the IGA by signing below.

CENTRAL ARIZONA WATER CONSERVATION DISTRICT

Attest:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ By:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Secretary Lisa Atkins, President

ARIZONA WATER BANKING AUTHORITY

Attest:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ By:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Secretary Thomas Buschatzke, Chairman

ARIZONA DEPARTMENT OF WATER

RESOURCES

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

Thomas Buschatzke , Director

**LEGAL DETERMINATION**

Pursuant to A.R.S. § 11-952, the foregoing Amendment No. 2 to the Intergovernmental Agreement among ADWR, AWBA and CAWCD has been submitted to legal counsel of the Arizona Department of Water Resources. The undersigned counsel has determined that said Amendment No. 2 to the IGA 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 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 2015

Arizona Department of Water Resources

Kenneth C. Slowinski, Chief Counsel

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

Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**LEGAL DETERMINATION**

Pursuant to A.R.S. § 11-952, the foregoing Amendment No. 2 to the Intergovernmental Agreement among ADWR, AWBA and CAWCD has been submitted to legal counsel of the Arizona Water Banking Authority. The undersigned counsel has determined that said Amendment No. 2 to the IGA 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 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 2015

Arizona Water Banking Authority

Kenneth C. Slowinski, Chief Counsel

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

Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**LEGAL DETERMINATION**

Pursuant to A.R.S. § 11-952, the foregoing Amendment No. 2 to the Intergovernmental Agreement among ADWR, AWBA and CAWCD has been submitted to legal counsel of the Central Arizona Water Conservation District. The undersigned counsel has determined that said Amendment No. 2 to the IGA is in proper form and is within the powers and authority granted under the laws of the State of Arizona and to the Central Arizona Water Conservation District.

Dated this \_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 2015

Central Arizona Water Conservation District

Jay M. Johnson, General Counsel

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

Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_