AGREEMENT AMONG THE ARIZONA DEPARTMENT OF WATER RESOURCES, CENTRAL ARIZONA WATER CONSERVATION DISTRICT, CENTRAL ARIZONA IRRIGATION AND DRAINAGE DISTRICT, HOHOKAM IRRIGATION AND DRAINAGE DISTRICT, HARQUAHALA VALLEY IRRIGATION DISTRICT, MARICOPA STANFIELD IRRIGATION & DRAINAGE DISTRICT, QUEEN CREEK IRRIGATION DISTRICT AND SAN CARLOS IRRIGATION AND DRAINAGE DISTRICT

FOR THE MITIGATION OF REDUCTIONS TO CAP AG POOL WATER UNDER

THE DROUGHT CONTINGENCY PLAN

This Agreement ("Agreement") is made this 30th day of July 2019 among the Arizona Department of Water Resources, Central Arizona Water Conservation District, Central Arizona Irrigation and Drainage District, Hohokam Irrigation and Drainage District, Harquahala Valley Irrigation District, Maricopa Stanfield Irrigation & Drainage District, Queen Creek Irrigation District, and San Carlos Irrigation District, sometimes each individually referred to in this Agreement as a “Party” and collectively as the “Parties.”

RECITALS

A. The Central Arizona Water Conservation District ("CAWCD") is a political subdivision of the State of Arizona established pursuant to Arizona Revised Statutes §§ 48-3701, et seq., which operates the Central Arizona Project ("CAP") pursuant to contracts and agreements with the United States.

B. The Central Arizona Irrigation and Drainage District, Hohokam Irrigation and Drainage District, Harquahala Valley Irrigation District, Maricopa Stanfield Irrigation & Drainage District, Queen Creek Irrigation District, and San Carlos Irrigation District (collectively defined hereinafter as the “Irrigation Districts”) each have Contracts for Excess Water that was reserved for agricultural uses pursuant to the CAWCD Policy for Marketing of Excess Water For Non-Indian Agriculture Use – 2004 Through 2030.

C. On April 16, 2019, the President of the United States signed Pub. L. No 116-14, directing the United States Department of the Interior to implement the Colorado River Drought Contingency Plan, which includes the Lower Basin Drought Contingency Plan Agreement ("LBDCP Agreement"). The State of Arizona, acting through the Arizona Department of Water Resources ("ADWR"), is a party to the LBDCP Agreement, which is designed to address falling elevations in Lake Mead. The LBDCP Agreement requires reductions in Arizona Colorado River diversions at various Lake Mead elevations. Under the Agreement Regarding Lower Basin Drought Contingency Plan Obligation, CAWCD agreed to satisfy certain of Arizona’s reductions under the LBDCP Agreement, which will result in net reductions to available CAP Project Water.
D. CAWCD and ADWR jointly convened the Lower Basin Drought Contingency Plan Arizona Implementation Steering Committee ("Steering Committee") composed of Arizona water users, stakeholders and legislative leaders to discuss and recommend how to adopt and implement the LBDCP Agreement in a way that is acceptable to Arizona water users. The Steering Committee identified various resources that were expected to be available during the term of the LBDCP Agreement that could partially mitigate the impacts of DCP Reductions on lower-priority CAP water users. This included an estimated 80,000 acre-feet of Project Water that the CAWCD Board anticipated being available from CAP operations during the term of the LBDCP Agreement. The CAWCD Board further committed up to 400,000 acre-feet of Intentionally Created Surplus ("ICS") water held by CAWCD and up to $60,000,000 of compensated mitigation resources. In addition, various CAP users agreed to undertake storage of CAP water at Groundwater Savings Facilities ("GSF") to offset the impacts of DCP Reductions to the Irrigation Districts. Portions of these resources will be used to provide mitigation to CAP NIA Priority contractors and subcontractors, pursuant to the terms of the NIA Mitigation Agreement, while other portions will be used to provide mitigation to the Irrigation Districts pursuant to the terms of this Agreement.

E. This Agreement is intended to govern the mitigation provided to the Irrigation Districts during the Term of this Agreement.

AGREEMENT

1. Definitions.

a. "Ag Mitigation" means the use of Mitigation Water to provide 105,000 acre-feet ("AF") of water to the Irrigation Districts during each Year 2020, 2021 and/or 2022 that a Tier 1 Shortage exists, and to provide 70,000 AF of water to the Irrigation Districts during each Year 2020, 2021 and/or 2022 that a Tier 2 Shortage exists, as more fully set forth in Section 3 of this Agreement.

b. "AWBA Exchange Agreement" means the Lower Basin Drought Contingency Plan ("LBDCP") Implementation Plan: Agreement to Exchange Long-Term Storage Credits Between Arizona Water Banking Authority and City of Avondale; City of Chandler; City of Goodyear; City of Peoria; City of Phoenix; City of Scottsdale; City of Tucson; Freeport Minerals Corporation; and EPCOR Water Arizona Inc.

c. "CAP ICS" means up to 400,000 AF of ICS held by CAWCD and dedicated by resolution of the CAWCD Board for mitigation purposes, including 50,000 AF CAP ICS that will be preserved in Lake Mead for the duration of the Term to allow for the delivery of up to an equivalent amount of exchange water that will be
provided by the Salt River Project pursuant to the CAWCD/SRP Water Exchange Agreement for the Drought Contingency Plan.

d. “DCP Reduction” means a reduction in available Project Water in a given Year as the result of Arizona DCP Contributions pursuant to the LBDCP Agreement.

e. “Excess Water” means that water defined as Excess Water in the Repayment Stipulation.

f. “Irrigation Districts” means Central Arizona Irrigation and Drainage District, Hohokam Irrigation and Drainage District, Harquahala Valley Irrigation District, Maricopa Stanfield Irrigation & Drainage District, Queen Creek Irrigation District, and San Carlos Irrigation District.

g. “Mitigation Water” means a) CAP Water stored by cities, industries, and water utilities at the Irrigation Districts’ GSFs during DCP Reductions as described in Exhibit A to the AWBA Exchange Agreement; b) up to 400,000 AF of CAP ICS; c) approximately 50,000 AF of Project Water estimated to be available from CAP operations during the term of this Agreement; and d) exclusively in 2022, Replacement Groundwater Supplies.

h. “NIA Mitigation Agreement” means the Agreement Among the Central Arizona Water Conservation District, Gila River Indian Community, City of Chandler, Town of Gilbert, City of Glendale, City of Mesa, City of Phoenix, City of Scottsdale and City of Tempe for the Mitigation of Reductions to CAP NIA Priority Water under the Drought Contingency Plan.

i. “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.

j. “Replacement Groundwater Supplies” means groundwater supplies available to the Irrigation Districts as a result of new groundwater infrastructure development funding provided to the Irrigation Districts consistent with the Regional Conservation Partnership Program proposal “Central Arizona Regionally Irrigation Efficiency and Conservation Project.”

k. “Tier 1 Shortage” means a Year in which the Lake Mead content is projected on January 1 of that Year to be at or below elevation 1,075 feet and at or above 1,050 feet. For the purpose of this definition, “projected on January 1” means the projection based on the Reclamation 24-Month Study that is conducted in August of the previous Year. The 24-Month Study is the operational study that
reflects the current Annual Operating Plan that is updated each month by Reclamation to project future Colorado River reservoir contents and releases.

l. "Tier 2a Shortage" means a Year in which Lake Mead content is projected on January 1 of that Year to be below elevation 1,050 feet and at or above 1,045 feet. For the purpose of this definition "projected on January 1" shall have the same meaning set forth in Section 1(k) above.

m. "Tier 2b Shortage" means a Year in which Lake Mead content is projected on January 1 of that Year to be below elevation 1,045 feet and at or above 1,025 feet. For the purpose of this definition "projected on January 1" shall have the same meaning set forth in Section 1(k) above.

n. "Tier 3 Shortage" means a Year in which Lake Mead content is projected on January 1 of that Year to be below elevation 1,025 feet. For the purpose of this definition "projected on January 1" shall have the same meaning set forth in Section 1(k) above.

o. "Year" means a calendar year.

2. **Term.** This Agreement shall become effective when all of the following have occurred:
   a) this Agreement has been executed by all Parties;
   b) the LBDCPA Agreement has been signed by all parties to that agreement; and
   c) the Agreement Regarding Lower Basin Drought Contingency Plan Obligations has been signed by all parties to that agreement. This Agreement shall terminate on December 31, 2026.

3. **Ag Mitigation.** In 2020, 2021 and 2022, CAWCD and the Irrigation Districts agree that the Irrigation Districts shall be entitled to receive Mitigation Water as provided and subject to the conditions herein:
   a. In a Tier 1 Shortage, the Irrigation Districts shall be entitled to a combined total of 105,000 acre-feet per Year of Mitigation Water.
   b. In a Tier 2 Shortage, the Irrigation Districts shall be entitled to a combined total of 70,000 acre-feet per Year of Mitigation Water.
   c. In the event a Tier 3 Shortage condition exists, the Irrigation Districts shall not be entitled to any Mitigation Water for the Year(s) in which the Tier 3 shortage is in effect; provided however that the Irrigation Districts shall be entitled to use Replacement Groundwater Supplies during any Year in which a Tier 3 Shortage condition exists.
   d. In any Year in which Tier 1 Shortage, Tier 2 Shortage or Tier 3 Shortage is not in effect, CAWCD agrees that Excess Water shall be available to the Irrigation Districts consistent with the terms of the Arizona Water Rights Settlement Agreement, the Excess Water contracts held by the Irrigation Districts, and

e. The Irrigation Districts' entitlement to Mitigation Water shall be satisfied from the following resources in the priority order stated below:
   i. First - CAP Water stored by cities, industries, and water utilities at the Irrigation Districts' GSFs during a Tier 1 Shortage or Tier 2 Shortage as described in Exhibit A to the AWBA Exchange Agreement.
   ii. Second - beginning in Year 2022, Replacement Groundwater Supplies
   iii. Third - CAP supplies including:
      1. Up to 50,000 AF of Project Water estimated to be available from CAP operations during the term of this Agreement; and
      2. Up to 400,000 AF of CAP ICS

f. CAWCD may use a portion of the CAP supplies identified in Section 3(e)(iii) to supply water to CAP NIA Priority contractors and subcontractors pursuant to the NIA Mitigation Agreement; provided however, that CAWCD shall not deliver Mitigation Water to the Irrigation Districts unless it has fully satisfied CAP NIA priority contractors' and subcontractors' water orders consistent with the provisions of the NIA Mitigation Agreement.

g. Total deliveries to the Irrigation Districts from the CAP supplies identified in Section 3(e)(iii) shall not exceed the following:
   i. 58,500 AF in Years 2020 or 2021 during a Tier 1 Shortage
   ii. 23,500 AF in Years 2020 or 2021 during a Tier 2a Shortage
   iii. 70,000 AF in Years 2020 or 2021 during a Tier 2b Shortage
   iv. 42,000 AF in Year 2022 during a Tier 1 Shortage
   v. 7,000 AF in Year 2022 during a Tier 2a Shortage
   vi. 53,500 in Year 2022 during a Tier 2b Shortage

h. The total Mitigation Water delivered to the Irrigation Districts in any Year shall be allocated to each irrigation district as follows, unless otherwise agreed to by the Irrigation Districts:
   i. Central Arizona Irrigation and Drainage District: 34%
   ii. Maricopa Stanfield Irrigation & Drainage District: 33%
   iii. Hohokam Irrigation and Drainage District: 11%
   iv. Harquahala Valley Irrigation District: 10%
   v. San Carlos Irrigation and Drainage District: 10%
   vi. Queen Creek Irrigation District: 2%
i. The Irrigation Districts shall not be entitled to Mitigation Water in Years 2023, 2024, 2025, or 2026. The Parties agree that this provision shall in no way be construed to preclude the Irrigation Districts from utilizing Replacement Groundwater Supplies in 2023, 2024, 2025 or 2026.

j. Nothing in this Section 3 shall prevent CAP contractors and subcontractors from entering into voluntary agreements with one or more of the CAP Irrigation Districts to deliver CAP water for storage in GSF facilities.

4. Annual Coordination.
   
a. On or before September 1 of 2019, 2020 and 2021, the Parties will meet and confer to discuss the water orders for the next Year and the sources identified in Section 3(e)(i)-(iii) available to satisfy those orders.

b. In the 2021 annual meeting, the Irrigation Districts will use their best efforts to quantify the amount of Replacement Groundwater Supplies that will be available for use in 2022.

c. On or before October 1 of 2019, 2020 and 2021, the Irrigation Districts shall provide CAWCD with any agreements among the Irrigation Districts to vary from the allocation of Mitigation Water to each irrigation district as set forth in Section 3(h).

5. Satisfaction of Rights. The Irrigation Districts agree that during the term of this agreement, the Mitigation provided for in Section 3 fully satisfies CAWCD's obligations for delivery of Excess CAP water under the terms of the Arizona Water Rights Settlement Agreement, Excess Water contracts held by the Irrigation Districts, and CAWCD's Policy for Marketing of Excess Water for Non-Indian Agricultural Use 2004 Through 2030 and associated Supplemental Policies.

   
a. Notices. Any notice, demand, or request authorized or required by this Agreement shall be in writing and shall be deemed to have been duly given if delivered by email to a valid email address designated by the Parties, or if mailed first class or delivered, to the following address:

   If to ADWR
   Arizona Department of Water Resources
   Attn: Director
   P.O. Box 36020
   Phoenix, AZ 85067
If to Queen Creek Irrigation District:

Queen Creek Irrigation District
Attn: General Manager
P.O. Box 690
Queen Creek, AZ 85142

If to San Carlos Irrigation and Drainage District:

San Carlos Irrigation and Drainage District
Attn: General Manager
P.O. Box 218
Coolidge, AZ 85128

b. **Representations and Warranties.**
   
i. Each Party has all legal power and authority to enter into this Agreement and to perform its obligations hereunder on the terms set forth in this Agreement, and the execution and delivery hereof by each Party and the performance by each Party of its obligations hereunder shall not violate or constitute an event of default under the terms or provisions of any agreement, document, or instrument to which each of the Parties is a party or by which each Party is bound.
   
ii. Each Party warrants and represents that the individual executing this Agreement on behalf of the Party has the full power and authority to bind the Party he or she represents to the terms of this Agreement.
   
iii. This Agreement constitutes a valid and binding agreement of each Party, enforceable against each Party in accordance with its terms.

c. **Binding Effect and Limited Assignment.** The provisions of this Agreement shall apply to and bind the successors and assigns of the Parties upon receipt of written agreement to the terms of this Agreement, but no assignment or transfer of this Agreement or any right or interest therein shall be valid until approved in writing by all Parties.

d. **Amendment, Modification, and/or Supplement.** No amendment, modification, or supplement to this Agreement shall be binding unless it is in writing and signed by all Parties.

e. **No Third-Party Beneficiaries.** This Agreement is not intended nor shall it be construed to create any third-party beneficiary rights to enforce the terms of this Agreement on any person or entity that is not a Party.
f. **Counterparts.** This Agreement may be executed in counterparts, each of which shall be an original and all of which, together, shall constitute only one Agreement.

g. **Uncontrollable Forces.** No Party will be considered to be in default in the performance of any of its obligations hereunder when a failure of performance is 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, riot, civil disturbance or disobedience, strike, labor dispute, labor or material shortage, sabotage, terrorism, or restraint by court order or public authority, which by exercise of due diligence such Party could not reasonably have been expected to avoid and which by exercise of due diligence it shall be unable to overcome. Drought and water shortages contemplated by this Agreement are not "uncontrollable forces" for the purposes of this Agreement.

h. **Dispute Resolution.** 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 promptly, equitably, and in good faith. The Parties also agree to resolve all disputes arising out of or relating to this Agreement through arbitration, after exhausting applicable administrative review, to the extent required by A.R.S. § 12-1518.

i. **Choice of Law.** This Agreement is governed by and shall be construed and interpreted in accordance with Arizona law. Any action to resolve any dispute regarding this Agreement shall be taken in a state court of competent jurisdiction located in Maricopa County, Arizona.

j. **Conflict of Interest.** The Parties to this Agreement are hereby notified of and acknowledge A.R.S. § 38-511 regarding cancellation for conflict of interest.

k. **Records and Inspections.** All books, accounts, reports, files and other records in relation to this Agreement shall be subject at all reasonable times to inspection and audit by the Parties throughout the term of this Agreement and for a period of five years after the completion of this Agreement. Upon request, a Party must produce original of any or all such records.

l. **Equal Opportunity.** 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.
m. **Availability of Funds.** In accordance with ARS § 35-154, every payment obligation of the State under this Agreement is conditioned upon the availability of funds appropriated or allocated for payment of such obligation.

*Signature pages follow*
ARIZONA DEPARTMENT OF WATER RESOURCES

By

Thomas Buschatske, Director

Date: 20 May 2019

APPROVED AS TO FORM:

By

Nicole D. Klobas, Deputy Chief Counsel
CENTRAL ARIZONA WATER CONSERVATION DISTRICT

By: Lisa Atkins, President

Date: 2011-04-19

ATTTEST:

By: Sharon Megdal, Secretary

APPROVED AS TO FORM:

By: Jay Johnson, General Counsel
CENTRAL ARIZONA IRRIGATION AND DRAINAGE DISTRICT

By:  
Daniel Shedd, President

Date: 6-25-19

ATTEST:

By:  
Rodney Shedd, Secretary
Ronald McEachern, Asst./Sec.

APPROVED AS TO FORM:

By:  
[Signature]
HOHOKAM IRRIGATION AND DRAINAGE DISTRICT

By: ____________________________
Waylon Wuertz, President

Date: __________________________
7-10-19

ATTEST:

By: ____________________________
Colin Scott, Secretary

APPROVED AS TO FORM:

By: ____________________________
Michael Curtis, District Counsel
HARQUAHALA VALLEY IRRIGATION AND DRAINAGE DISTRICT

By:  

Date:  6-20-19

ATTEST:

By:  

APPROVED AS TO FORM:

By:  

Ag Mitigation Agreement
MARICOPA STANFIELD IRRIGATION & DRAINAGE DISTRICT

By: ________________
    Bryan Hartman, President

Date: ____________

ATTEST:

By: ________________
    Kelly Anderson, Secretary

APPROVED AS TO FORM:

By: ____________________
QUEEN CREEK IRRIGATION DISTRICT

By: [Signature]

Date: 6-25-19

ATTEST:

By: [Signature]

APPROVED AS TO FORM:

By: [Signature]
SAN CARLOS IRRIGATION AND DRAINAGE DISTRICT

By: ________________________________

Date: 7/30/19

ATTEST:

By: ________________________________

APPROVED AS TO FORM:

By: ________________________________