AGREEMENT
AMONG
THE UNITED STATES OF AMERICA REPRESENTED BY THE SECRETARY OF THE INTERIOR ACTING THROUGH THE REGIONAL DIRECTOR OF THE LOWER COLORADO REGION OF THE BUREAU OF RECLAMATION, THE ARIZONA DEPARTMENT OF WATER RESOURCES, THE ARIZONA WATER BANKING AUTHORITY, THE CENTRAL ARIZONA WATER CONSERVATION DISTRICT, THE 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 NIA PRIORITY CAP WATER UNDER THE DROUGHT CONTINGENCY PLAN

THIS AGREEMENT (this "NIA Mitigation Agreement" or "Agreement") is made this 18th day of July, 2019, among the City of Chandler, Town of Gilbert, City of Glendale, City of Mesa, City of Phoenix, City of Scottsdale, and City of Tempe, (collectively referred to as the "Cities"), the United States of America, the Arizona Department of Water Resources ("ADWR"), the Arizona Water Banking Authority ("AWBA"), the Central Arizona Water Conservation District ("CAWCD"), and the Gila River Indian Community ("Community"), sometimes each referred to in this Agreement as a "Party" and collectively as the "Parties".

Recitals

A. Cities are municipal corporations that operate municipal utilities and serve water to customers within their service areas. Cities are legally entitled to Non-Indian Agricultural Priority ("NIA Priority") water from the Central Arizona Project ("CAP") through various contracts, subcontracts and agreements with the U.S. Bureau of Reclamation ("Reclamation"), CAWCD, and other parties.

B. The Community is a federally-recognized Indian Tribe that is legally entitled to NIA Priority CAP water from the CAP under the Arizona Water Settlements Act of 2004, Pub. Law 108-451 (Dec. 10, 2004), and through an agreement with the United States through Reclamation.

C. CAWCD is a political subdivision of the State of Arizona, established pursuant to Arizona Revised Statutes § 48-3701 *et seq.*, which operates the CAP pursuant to various contracts and agreements with Reclamation.

D. On April 16, 2019, the President of the United States signed Pub. L. No. 116-14, requiring the United States Department of the Interior to implement the Colorado River Drought Contingency Plans, which includes the Lower Basin Drought Contingency Plan Agreement ("LBDCP Agreement"). The State of Arizona ("Arizona"), acting through the Director of ADWR, is a party to the LBDCP Agreement, which is designed to address falling elevations in Lake Powell and

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 Obligations between the United States and CAWCD, CAWCD agreed to implement certain of Arizona's reductions under the LBDCP Agreement, which will result in net reductions to available CAP Project Water.

E. The Lower Basin Drought Contingency Plan Arizona Implementation Steering Committee ("Steering Committee") developed the "Arizona DCP Implementation Framework". CAWCD, Reclamation, ADWR, AWBA, the Community and certain other major water users in Arizona entered into the Arizona DCP Implementation Framework Agreement ("DCP Framework Agreement"). Consistent with the DCP Framework Agreement, various Arizona parties are entering into agreements and arrangements that, taken together, are intended to partially "mitigate" the impacts of DCP Reductions on lower-priority CAP water users.

F. The DCP Framework Agreement identified various resources that were expected to be available during the term of the LBDCP Agreement that could reduce these impacts. This included an estimated eighty thousand (80,000) acre-feet of Project Water that the CAWCD Board anticipated being available from CAP carry-over and Lake Pleasant operations during the term of the LBDCP Agreement and committed to the Arizona Implementation Framework. The CAWCD Board further committed up to four hundred thousand (400,000) acre-feet of Intentionally Created Surplus ("ICS") water held by CAWCD and up to $60,000,000 of Compensated Mitigation Resources (as defined elsewhere in this Agreement). In addition, various CAP users agreed to undertake storage of CAP water at Groundwater Savings Facilities ("GSFs") to offset the impacts of DCP Reductions to CAP agricultural districts.

G. Pursuant to Section 105 of Public Law 108-451, the Arizona Water Settlements Act of 2004, the United States and Arizona have a statutory obligation to firm specific CAP water supplies for certain Tribes in times of shortage. Therefore, the Tohono O'odham Nation is not a party to this Agreement as their NIA priority entitlement will be firmed by the United States and will not require mitigation.

H. Finally, the DCP Framework Agreement includes the storage of additional ICS by the Community and compensated reductions in use by certain other parties as "system conservation" to offset additional withdrawals from Lake Mead that could occur as a result of the delivery of CAP ICS, as well as the preservation of

fifty thousand (50,000) acre-feet of CAP ICS in Lake Mead for the duration of the Term.

I. Certain of the resources described in Recital F are within the control of CAWCD and are to be deployed to replace or increase deliveries of Project Water to parties with contractual entitlements to M&I, Indian Priority, and NIA Priority CAP water during any Tier 1 Shortage, Tier 2a Shortage, or Tier 2b Shortage (as hereinafter defined) if such conditions occur during the Years 2020, 2021, and/or 2022, and thereafter to provide for deliveries of Project Water to certain agricultural districts during a Tier 1 Shortage, Tier 2a Shortage, and Tier 2b Shortage, if such condition(s) occur during 2020, 2021, and/or 2022, as specifically set forth in the Ag Mitigation Agreement and this Agreement. If those shortage conditions occur during 2023, 2024, and/or 2025, the remaining resources are to be deployed to replace or increase deliveries of Project Water to parties with contractual entitlements to M&I, Indian Priority, and NIA Priority CAP water as specifically set forth in this Agreement.

J. This Agreement is intended to govern how the NIA Mitigation will be undertaken as part of the DCP Framework Agreement. The Parties' ability and willingness to enter into this Agreement are contingent upon the Director of ADWR executing the LBDCP Agreement.

1. Definitions. Unless otherwise defined within this Agreement, the definitions within the Parties' CAP contracts and subcontracts and the Repayment Stipulation shall apply to this Agreement. Definitions contained in the Recitals to this Agreement are hereby incorporated by reference.

   a. "Ag Mitigation" means water supplies provided to the CAP Irrigation Districts in accordance with the Ag Mitigation Agreement and this Agreement.

   b. "Ag Mitigation Agreement" means the Agreement Among the 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.

   c. "Annual Operating Plan" means the final water delivery schedules prepared annually by CAWCD, confirming the volumes of water to be delivered during the following Year.

d. "CAP Delivery Supply" means the amount of Project Water determined to be available for delivery to CAP contractors and subcontractors in the Annual Operating Plan.

e. "CAP Irrigation Districts" means the various CAP irrigation districts that are parties to the Ag Mitigation Agreement.

f. "CAP ICS" means up to four hundred thousand (400,000) acre-feet of ICS held by CAWCD, dedicated by resolution of the CAWCD Board for mitigation purposes as outlined in the DCP Framework Agreement, including fifty thousand (50,000) acre-feet of 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.

g. "Compensated Mitigation Resources" means up to sixty million dollars ($60,000,000) dedicated by resolution of the CAWCD Board to provide (1) compensation to a NIA Party as mitigation for a DCP Reduction or (2) resources developed pursuant to a Compensated Conservation Agreement, to the extent such expenditures are required to provide NIA Mitigation and Ag Mitigation as provided in this Agreement.

h. "Compensated Conservation Agreement" has the meaning prescribed in **Section 3(i)(vi)**.

i. "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.

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

k. "Firming Obligation" means (i) the United States' or AWBA's statutory requirement under section 105 of Public Law 108-451, the Arizona Water Settlements Act of 2004, to satisfy all or a portion of a tribal CAP water order that is reduced due to water shortages, and (b) the AWBA's commitment in its Policy Regarding Distribution of Long-Term Storage Credits for Firming CAP Municipal and Industrial Subcontractors, adopted on March 4, 2019. For purposes of this Agreement, a Firming Obligation shall be calculated prior to the deployment of Mitigation Resources.

l. "Long-term Contract" shall mean a long-term contract or subcontract for delivery of a Project Water entitlement as defined in footnote 1 to section 4(a) of the Repayment Stipulation.

m. "Master Repayment Contract" means the Contract Between the United States and the Central Arizona Water Conservation District for Delivery of Water and Repayment of Costs of the Central Arizona Project, Contract No. 14-06-W-245, Amendment No. 1, dated December 1, 1988, as it may be amended and supplemented.

n. "Mitigation Resources" shall mean the combination of both Compensated Mitigation Resources and Mitigation Water.

o. "Mitigation Water" means certain Project Water consisting of up to four hundred thousand (400,000) acre-feet of CAP ICS and an estimated fifty thousand (50,000) acre-feet of Project Water that the CAWCD Board anticipated being available from CAP operations during the term of the LBDCP Agreement.

p. "NIA Mitigation" shall mean the use of Mitigation Resources to fully satisfy the water orders of parties with contractual entitlements to NIA Priority CAP water during any Tier 1 Shortage, Tier 2a Shortage, or Tier 2b Shortage, if such conditions occur during the Years 2020, 2021, and/or 2022, or, if those shortage conditions occur during 2023, 2024, and/or 2025, the use of Mitigation Resources to partially satisfy the water orders of parties with contractual entitlements to NIA Priority CAP water at the level identified by the Tier Percent, as more fully set forth in **Section 3**.

q. "NIA Parties" shall mean certain NIA Priority CAP water contractors and subcontractors, specifically the Community and the Cities, that will receive NIA Mitigation pursuant to this Agreement, each individually an "NIA Party." If other entities receive a right to NIA Priority CAP water as provided in **Section 5**, those entities shall also be considered NIA Parties.

r. "NIA Priority Pool" shall mean that volume of Project Water available to satisfy the water orders of entities holding a Long-term Contract to NIA Priority CAP water.

s. "Project Water" means that water defined as Project Water in the Repayment Stipulation.

t. "Repayment Stipulation" shall mean 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.

u. "**Section**" means a section of this Agreement.

v. "Term" has the meaning set forth in **Section 2**.

w. "Tier 1 Shortage" means a Year in which 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 projected Lake Mead elevation 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.

x. "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(w)** above.

y. "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(w)** above.

z. "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(w)** above.

aa. "Tier Percent" shall be the percentage to be applied to the water orders of NIA Parties to determine the appropriate level of NIA Mitigation in the Years 2023, 2024 and 2025. The following Tier Percents shall be applied in the following shortage conditions: (a) seventy-five percent (75%) in a Tier 1 Shortage; (b)

seventy-five percent (75%) in a Tier 2a Shortage; (c) fifty percent (50 %) in a Tier 2b Shortage; and (d) zero percent (0%) in a Tier 3 Shortage.

bb. "Year" means a calendar Year.

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

3. NIA Mitigation.

   a. In any Year prior to a Tier 1 Shortage, in determining the available CAP Delivery Supply in the Annual Operating Plan, CAWCD will include water in Lake Pleasant that is in excess of the fifty thousand (50,000) acre-feet that CAWCD has determined is required for operational needs, consistent with the terms of the Central Arizona Project System Use Agreement Between the United States and the Central Arizona Water Conservation District, Agreement No. 17-XX-30-W0622 (Feb. 2, 2017). CAWCD shall operate in good faith to maximize the volume of Project Water to entities with Long-term Contracts during the Term, consistent with its current operating practices.

   b. In any Year between 2020 and 2025, when a DCP Reduction will reduce the available CAP Delivery Supply such that the water delivery schedules for NIA Priority CAP water cannot be fully satisfied, CAWCD will utilize available Mitigation Resources to provide NIA Mitigation as provided in this **Section 3**.

   c. CAWCD's obligation to provide NIA Mitigation under this Agreement expires at the earlier of (i) the satisfaction of the obligations set forth in this **Section 3**, or (ii) when all Mitigation Resources have been exhausted. All deliveries of water derived from the use of Mitigation Resources shall be made in a manner consistent with the requirements of existing Long-term Contracts for delivery of Project Water.

   d. In any Year between 2020 and 2025 during which a DCP Reduction is occurring that reduces the water supply available to M&I and Indian Priority CAP water users, CAWCD will utilize available Mitigation Resources to replace or increase the volume of Project Water available for delivery to M&I and Indian Priority CAP

water users as needed to fully satisfy the water delivery schedules for M&I and Indian Priority CAP water, after accounting for any Firming Obligations that will be available to satisfy those schedules; provided, however, that Mitigation Resources will not be deployed in any Year in which a Tier 3 Shortage is in effect on the Colorado River.

e. If a DCP Reduction occurs in Years 2020, 2021 or 2022, CAWCD shall utilize available Mitigation Resources to replace or increase the volume of Project Water available for delivery to NIA Priority CAP water users, as needed to fully satisfy the water delivery schedules for NIA Priority CAP water after accounting for any Firming Obligations provided by the AWBA or the United States; provided, however, that Mitigation Resources will not be deployed in any Year in which the a Tier 3 Shortage is in effect on the Colorado River.

f. If a DCP Reduction occurs in Years 2023, 2024 or 2025, CAWCD shall utilize available Mitigation Resources to replace or increase the volume of Project Water available for delivery to NIA Priority CAP water users, as needed to partially satisfy, at the level defined by the Tier Percent, the water delivery schedules for NIA Priority CAP water after accounting for any Firming Obligations provided by the AWBA or the United States; provided, however, that Mitigation Resources will not be deployed in any Year in which a Tier 3 Shortage is in effect on the Colorado River.

g. In any Year in which a Tier 1, 2a or 2b Shortage is in effect CAWCD shall use as Mitigation Water any SRP exchange water available pursuant to and consistent with the terms of the CAWCD/SRP Water Exchange Agreement for the Drought Contingency Plan, dated February 27, 2019, prior to deploying any CAP ICS.

h. If a Tier 1, Tier 2a or Tier 2b Shortage occurs in 2020, 2021 or 2022, and provided that CAWCD has deployed Mitigation Resources as required in this **Section 3**, CAWCD may utilize available Mitigation Water to increase the amount of Project Water available for delivery as needed to supply Excess Water to CAP Irrigation Districts pursuant to the Ag Mitigation Agreement, subject to the following terms and conditions.

    i. Total CAWCD Mitigation Water deliveries to the CAP Irrigation Districts during a Tier 1 Shortage that occurs in either of the Years 2020 or 2021 shall not exceed fifty-eight thousand five hundred (58,500) acre-feet.

ii. Total CAWCD Mitigation Water deliveries to the CAP Irrigation Districts during a Tier 2a Shortage that occurs in either of the Years 2020 or 2021 shall not exceed twenty-three thousand five hundred (23,500) acre-feet.

iii. Total CAWCD Mitigation Water deliveries to the CAP Irrigation Districts during a Tier 2b Shortage that occurs in either of the Years 2020 or 2021 shall not exceed seventy thousand (70,000) acre-feet.

iv. Total CAWCD Mitigation Water deliveries to the CAP Irrigation Districts during a Tier 1 Shortage that occurs in Year 2022 shall not exceed forty-two thousand (42,000) acre-feet.

v. Total CAWCD Mitigation Water deliveries to the CAP Irrigation Districts, during a Tier 2a Shortage that occurs in Year 2022 shall not exceed seven thousand (7,000) acre-feet.

vi. Total CAWCD Mitigation Water deliveries to the CAP Irrigation Districts during a Tier 2b Shortage that occurs in Year 2022 shall not exceed fifty-three thousand five hundred (53,500) acre-feet.

vii. CAWCD shall not use any Mitigation Resources to create Excess Water for any other purpose.

viii. 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.

i. Compensated Mitigation Resources shall be utilized to comprise a portion of the NIA Mitigation by satisfying, on an acre-foot by acre-foot basis, a portion of the annual water orders of NIA Parties who agree to accept compensated mitigation payments at the rate identified in **Section 3(i)(iv)** below, consistent with the following:

i. During 2020, 2021, and 2022, any NIA Mitigation provided to the Community pursuant to this Agreement shall include Compensated Mitigation Resources equivalent to not less than sixty percent (60%) nor more than eighty percent (80%) of the total amount of NIA Mitigation provided to the Community in that Year.

ii. During 2023, 2024, and 2025, any NIA Mitigation provided to the Community pursuant to this Agreement shall include Compensated Mitigation Resources equivalent to not less than forty percent (40%) nor more than eighty percent (80%) of the total amount of NIA Mitigation provided to the Community in that Year.

iii. Through the Year 2025, any other NIA Party may agree to accept a payment of Compensated Mitigation Resources in exchange for agreeing to reduce its order of NIA Priority CAP water in a given water Year and thereby reduce the Community's obligations to accept Compensated Mitigation Resources under this **Section 3(i)**, provided that:

1. On or before October 1 of each Year of this Agreement, such NIA Party agreeing to accept Compensated Mitigation Resources submits a written statement to CAWCD indicating the maximum quantity, if any, of Compensated Mitigation the NIA Party is willing to accept for the following water Year as part of its order for NIA Priority CAP water, subject to the provisions of this **Section 3**;

2. CAWCD determines that the delivery of Compensated Mitigation Resources to such other NIA Party is consistent with meeting its obligations to provide NIA Mitigation under this Agreement; and,

3. The Community provides notice to CAWCD by October 1 of such Year that it accepts such a reduction to the Compensated Mitigation it would otherwise receive for the following water Year.

iv. To receive Compensated Mitigation, an NIA Party must reduce the quantity in acre-feet of their CAP water order for that water Year by an amount equal to the per acre-foot compensation that NIA Party has agreed to receive, based on a valuation of two hundred forty dollars ($240) per acre-foot in 2019, escalated thereafter at three percent (3%) per Year, as follows:

1. 2019 - $240.00/acre-foot
2. 2020 - $247.20/acre-foot
3. 2021 - $254.40/acre-foot
4. 2022 - $261.60/acre-foot
5. 2023 - $268.80/acre-foot

6. 2024 - $276.00/acre-foot
7. 2025 - $283.20/acre-foot

v. Each NIA Party shall submit a final water delivery schedule that incorporates any reductions in water deliveries that may be required by this **Section 3** no later than October 23 of the Year prior to the water delivery Year.

vi. CAWCD may, in coordination with the United States, enter into compensated conservation agreements with M&I CAP subcontractors or Indian Priority CAP contractors (each, a "Compensated Conservation Agreement") using available Compensated Mitigation Resources, in addition to or in lieu of agreements with the NIA Parties, provided that (a) the party has a history of actual use of such water; (b) the party reduces their order of Project Water in that water Year on an acre-foot by acre-foot basis; (c) the party is willing to participate in such arrangements at a cost less than the per-acre foot Compensated Mitigation payment valuation applicable in the Year that the water is delivered pursuant to subsection (iv) of this **Section 3**; and (d) the resulting Project Water supplies available to the NIA Priority Pool increase by an equivalent volume on a per acre-foot basis as compared to the amount that would have been available to the NIA Priority Pool in the absence of the agreement. Each Compensated Conservation Agreement shall reduce the total pool of Compensated Mitigation Resources based on the amount of funding actually expended in that agreement.

vii. By October 20, or the first business day thereafter, of each Year of this Agreement, CAWCD shall notify each NIA Party agreeing to accept Compensated Mitigation Resources of the amount of Compensated Mitigation Resources that will be available to them the following Year. CAWCD shall make two (2) lump sum payments equal to fifty percent (50%) of the Compensated Mitigation Resources due for that Year to each applicable NIA Party on each of April 15 and October 15 of that Year. In its sole discretion, a NIA Party may elect to have payments spread equally across the Year and applied as a credit to its water delivery charges each month.

4. Deployment of Mitigation Resources. CAWCD shall not deploy Mitigation Resources except as set forth in this Agreement. Consistent with the requirements of this Agreement, CAWCD will use its reasonable discretion to deploy Mitigation Resources in a manner that extends the availability of both CAP ICS and Compensated Mitigation

Resources for as long as feasible during the term of this Agreement, and to avoid exhausting one Mitigation Resource before the other.

a. In the event that the remaining Mitigation Resources are insufficient to provide the full amount of the NIA Mitigation required in any water Year, CAWCD shall utilize the remaining Mitigation Resources as follows:

    i. For NIA Parties electing to receive Compensated Mitigation Resources, first distribute available Compensated Mitigation Resources to such parties;

    ii. Then, deploy all remaining Mitigation Resources to the NIA Priority Pool.

b. Each NIA Party shall submit a final water delivery schedule that incorporates any reductions in water deliveries that may be required by **Section 4(a)** no later than October 23 of the Year prior to the water delivery Year.

5. White Mountain Apache Tribe Settlement. The Parties acknowledge that if the White Mountain Apache Tribe Settlement Agreement becomes enforceable during the Term, then the entities receiving a right to NIA Priority Pool water pursuant to that Settlement Agreement not already Parties to this Agreement shall be treated as additional NIA Parties.

6. Waiver of Claims Related to Conservation Activities.

The NIA Parties agree that they will not make any claim against CAWCD in connection with:

a. CAWCD's actions that are in compliance with the terms of this Agreement;

b. CAWCD's failure to schedule for delivery water strictly resulting from activities generating ICS pursuant to conservation activities authorized by the Framework Agreement Among The United States, The State of Arizona and Central Arizona Water Conservation District for an Arizona ICS Program; or

c. Reductions in the use of mainstream Colorado River water by the Colorado River Indian Tribes in accordance with its Agreement among the United States of America through the Department of the Interior, Bureau of Reclamation, the State of Arizona through the Arizona Department of Water Resources, the Central Arizona Water Conservation District, and the Colorado River Indian

Tribes to Fund the Creation of Colorado River System Water through Voluntary Water Conservation and Reductions in Use During Calendar Years 2020-2022.

Such waiver shall apply strictly and only to such CAWCD action(s) or inaction(s) during the Term.

7. Scope of the Agreement. This Agreement governs only the definition and use of Mitigation Resources during the Term, and shall not establish a course of dealing nor have any other effect outside the Term. The sole intent of the Parties is to set forth their understanding of the use of Mitigation Resources during the Term. Nothing in this Agreement shall amend any provision of, or contravene or diminish the rights or obligations of any party under the Master Repayment Contract, the Repayment Stipulation, the Central Arizona Project System Use Agreement Between the United States and the Central Arizona Water Conservation District, Agreement No. 17-XX-30-W0622 (Feb. 2, 2017), any Long-term Contract, or other pre-existing agreement. This Agreement shall not be considered to be an interpretation of the intent or understanding of the Parties as to such Long-term Contracts and other agreements, the provisions of which will also control in the case of any conflict with this Agreement.

8. Miscellaneous Provisions.

   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 Reclamation:	Bureau of Reclamation Lower Colorado Region Attn: Regional Director P.O. Box 61470 Boulder City, NV 89006-1470
With a copy to:	Bureau of Reclamation Phoenix Area Office Attn: Area Manager 6150 West Thunderbird Road Glendale, AZ 85306

If to AWBA:	Manager Arizona Water Banking Authority P.O. Box 36020 Phoenix, Arizona 85067-6020 voconnell@azwater.gov
If to ADWR:	Arizona Department of Water Resources Attn: Director P.O. Box 36020 Phoenix, AZ 85067
If to CAWCD:	Central Arizona Water Conservation District Attn: General Manager P.O. Box 43020 Phoenix, AZ 85080-3020
If to the City of Chandler:	Water Resources Manager City of Chandler P. O. Box 4008, Mail Stop 905 Chandler, Arizona 85244-4008 Facsimile: (480) 782-3805
With a copy to:	City Attorney City of Chandler P. O. Box 4008, Mail Stop 602 Chandler, Arizona 85244-4008 Facsimile: (480) 782-4652
If to the Community:	Stephen R. Lewis, Governor 525 West Gu u Ki P.O. Box 97 Sacaton, Arizona 85147
With a copy to:	Linus Everling, General Counsel 525 West Gu u Ki P.O. Box 97 Sacaton, Arizona 85147
If to the Town of Gilbert	Town of Gilbert Attn: Town Manager 50 East Civic Center Drive Gilbert, AZ 85296

If to the City of Glendale	Glendale City Manager Ken Phelps 5850 West Glendale Ave. Suite 431 Glendale, Arizona 85301
If to the City of Mesa	City Manager Christopher J. Brady PO Box 1466 Mesa, AZ 85211-1466
<u>If to the City of Phoenix:</u>	Water Services Director City of Phoenix 200 West Washington Street, 9th Floor Phoenix, Arizona 85003-1611
With a copy to:	City Attorney City of Phoenix 200 West Washington Street, 13th Floor Phoenix, Arizona 85003-1611
If to the City of Scottsdale	9379 E. San Salvador Dr. Scottsdale, Arizona 85258 Attention: Water Director
With a copy to:	3939 N. Drinkwater Blvd. Scottsdale, Arizona 85251 Attention: City Attorney
If to the City of Tempe	Water Resources Manager P.O. Box 5002 Tempe, AZ 85280
With a copy to:	Judi Baumann City Attorney 21 E. Sixth Street, Suite 201 Tempe, Arizona 85281

The designation of the address or addressee, including email addresses, may be changed by notice given as provided in this **<u>Section 8(a)</u>**.

b. <u>Non-waiver</u>. Except as provided in **<u>Section 6</u>**, no Party shall be considered to have waived any right hereunder except when such waiver of the right is given in

writing. The failure of a Party to insist in any one or more instances upon strict performance of any provisions of this Agreement or to take advantage of any of its rights hereunder shall not be construed as a waiver of any such provisions or a relinquishment of any such rights for the future, but such provisions and rights shall continue and remain in full force and effect.

c. 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.

d. Governing Law. This Agreement shall be interpreted, governed by, and construed under applicable Federal law and any relevant provisions of Arizona state law. In case of conflict between Federal law and Arizona state law, Federal law controls. To the extent permissible under the Federal Rules of Civil Procedure and other applicable Federal authority, venue for adjudication of any disputes under this Agreement shall be in an appropriate Federal court.

e. 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.

f. 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.

g. Dispute Resolution.

i. The Parties shall meet and confer in good faith to resolve any dispute that may arise under this Agreement.

ii. Should the Parties be unable to resolve such dispute after meeting to try to resolve the dispute, any Party may file an action in any court of competent jurisdiction to seek specific performance of any obligation, provision, term or condition set forth in this Agreement.

iii. Monetary damages, other than through specific performance of an obligation under this Agreement, shall not be available as a remedy for any dispute under this Agreement.

iv. No Party, other than the United States, shall raise a defense of sovereign immunity to any action filed against them solely for the purpose of seeking specific performance of any obligation under this Agreement. This provision is a limited waiver of the Community's sovereign immunity for the purpose of seeking specific performance of any obligation under this Agreement.

h. Availability of Information. Subject to applicable laws and regulations, each Party shall have the right during office hours to examine and make copies of the other Party's books and records solely and exclusively relating to matters specifically covered by this Agreement. All information and data obtained or developed with the performance of duties mentioned in this Agreement shall be available upon request to a Party, subject to the provisions of applicable law. However, use of said reports, data and information shall appropriately reference the source for the respective documents.

i. 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.

j. 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.

k. 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.

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, if any, is conditioned upon the availability of funds appropriated or allocated for payment of such obligation.

n. Force Majeure. 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.

o. Contingent on Appropriations or Allotment of Funds. The expenditure or advance of any money or the performance of any obligation of the United States under this Agreement shall be contingent upon appropriation or allotment of funds. No liability shall accrue to the United States in case funds are not appropriated or allotted.

p. Officials Not to Benefit. No Member of or Delegate of Congress, Resident Commissioner, or official of the Parties shall benefit from this Agreement other than as a water user or landowner in the same manner as other water users or landowners.

Signature pages follow

ARIZONA DEPARTMENT OF WATER RESOURCES

By: _____
Thomas Buschatzke, Director

Date: 5/20/19

APPROVED AS TO FORM:

By: _____
Nicole D. Klobas, Deputy Chief Counsel

ARIZONA WATER BANKING AUTHORITY

By: _____
Thomas Buschatzke, Chair

Date: 5/20/19

ATTEST:

By: _____
Kathryn A. Sorensen, Secretary

CENTRAL ARIZONA WATER CONSERVATION DISTRICT

By: _____
Lisa Atkins, President

Date: 20 May 19

ATTEST:

By: _____
Sharon Megdal, Secretary

APPROVED AS TO FORM:

By: _____
Jay Johnson, General Counsel

GILA RIVER INDIAN COMMUNITY

By: _____
Stephen Roe Lewis, Governor

Date: 5-20-2019

APPROVED AS TO FORM:

By: _____
Linus Everling, General Counsel

UNITED STATES OF AMERICA

By: _____
Terrance J. Fulp, Ph.D.
Regional Director
Lower Colorado Region
Bureau of Reclamation

Date: 7-18-2019

CITY OF CHANDLER, an Arizona municipal corporation

By: Kevin Hartke
Kevin Hartke, Mayor

Date: 7-12-19

ATTEST:

Dana R DeLong
Dana DeLong, City Clerk

CITY OF CHANDLER CORPORATE SEAL ARIZONA

APPROVED AS TO FORM:

Jenny J. Winkler
Jenny J. Winkler, Assistant City Attorney

TOWN OF GILBERT, an Arizona municipal corporation

By: _____
Jenn Daniels, Mayor

Date: June 11, 2019

ATTEST:

_____
Lisa Maxwell, City Clerk

APPROVED AS TO FORM:

_____
Title: Town Attorney

CITY OF GLENDALE, an Arizona municipal corporation

By: _____
for Kevin Phelps, Glendale City Manager

Date: 6/19/19

ATTEST:

_____

APPROVED AS TO FORM:

_____

CITY OF MESA, an Arizona municipal corporation

By: _____

Date: 7/11/19

ATTEST:

_____

APPROVED AS TO FORM:

_____

CITY OF MESA CORPORATE SEAL MARICOPA COUNTY, AZ

CITY OF PHOENIX, an Arizona municipal corporation

Ed Zuercher, City Manager

By: Kathryn Sorensen
Kathryn Sorensen
Director, Water Services Department

Date: 6/11/19

ATTEST:

ACTING City Clerk

APPROVED AS TO FORM:

Acting City Attorney CLC

2019 JUN 20 AM 11:27
CITY CLERK DEPT.

CITY OF SCOTTSDALE, an Arizona municipal corporation

By: _____
W.J. "Jim" Lane, Mayor

Date: 7/2/2019

ATTEST:

_____
Carolyn Jagger, City Clerk

APPROVED AS TO FORM:

_____
City Attorney
By Janis L. Bladine, Senior Assistant City Attorney

CITY OF TEMPE, an Arizona municipal corporation

By: _____
Mark Mitchell, Mayor

Date: 06/27/2019

ATTEST:

_____
Carla Reece, City Clerk

APPROVED AS TO FORM:

_____
Judi Baumann, City Attorney