

**AGREEMENT REGARDING TREATED WATER
BETWEEN
THE CITY OF MESA AND APACHE JUNCTION WATER UTILITIES COMMUNITY
FACILITIES DISTRICT**

This Agreement ("Agreement") is made and entered into this ____ day of _____, 2018, by and between the Water Utilities Community Facilities District, an Arizona community facilities district, doing business as Apache Junction Water District ("AJWD"), and the City of Mesa ("Mesa"), an Arizona municipal corporation. Mesa and AJWD are sometimes referred to individually as a "Party" or collectively as the "Parties."

RECITALS

- A. AJWD has an allocation of Central Arizona Project ("CAP") water and supplies of water that has been stored or saved underground pursuant to an underground storage permit under Chapter 3.1 of Title 45, Arizona Revised Statutes, but has limited treatment facilities for such water;
- B. Mesa is willing to accept AJWD's untreated CAP and stored water, and to make available treated water to AJWD in exchange for payment of charges for such availability;
- C. AJWD desires to deliver untreated CAP and stored water to Mesa and to pay such charges in exchange for the availability of treated water and the ability to take same;

AGREEMENT

Therefore, in consideration of the mutual promises and covenants and agreements set forth herein, the Parties agree as follows:

1. Definitions.

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

- 1.1 "ADWR" means the Arizona Department of Water Resources.
- 1.2 "AJWD's CAP Water" means the water that AJWD has under contract for delivery through the CAP system with the CAWCD and the United States, and which AJWD causes to be delivered to Mesa in accordance with this Agreement.
- 1.3 "AJWD Emergency" means the failure of an AJWD Water Treatment Plant, booster station, production well, or other similar condition which significantly reduces the AJWD system's water production or distribution capacity.

- 1.4 "AJWD Point of Delivery" means the direct connection between the Mesa municipal water distribution system and the AJWD water distribution system, where the water taken by AJWD pursuant to this Agreement shall be metered.
- 1.5 "AJWD Recovered Water" means water supplies recovered by AJWD from storage in accordance with A.R.S. § 45-801.01 *et seq.*
- 1.6 "Calendar Year" means in any given year the period commencing on January 1st and extending through December 31st.
- 1.7 "CAWCD" means the Central Arizona Water Conservation District, an Arizona political subdivision, or any successor in interest thereto.
- 1.8 "Contract Price" means the Monthly Quantity Fixed Charge, Monthly Quantity Variable Charge, Emergency Water Charge, and Supply Charge amounts set forth in Section 5.
- 1.9 "Emergency Delivery Water" means water provided at the AJWD Point of Delivery by Mesa during times of an AJWD Emergency and scheduled and replaced by AJWD in the form of AJWD CAP Water, AJWD Recovered Water, or accounted for as AJWD groundwater pumping, all as provided in this Agreement.
- 1.10 "Mesa Service Priority" means as defined in Section 23.
- 1.11 "Monthly Contract Quantity" means an amount of water on a monthly basis not to exceed 7.0 acre feet except in times of an AJWD Emergency.

2. Term.

This Agreement shall be effective for a term beginning as of the date the Agreement is signed by all Parties ("Effective Date") and continuing for a period of six (6) years ("Initial Term"). This Agreement shall automatically renew for two (2) additional four (4) year terms (the "Extension Terms") unless one of the Parties provides written notice of termination to the other at least twelve (12) months before the end of the then current Term. If such notice is properly delivered under the terms of this Agreement, the Agreement will terminate at the end of such Term. In no event, shall this Agreement extend beyond fourteen (14) years from the Effective Date.

3. Delivery, Sale and Purchase of Water.

Mesa agrees to accept AJWD CAP Water, and make treated water available to AJWD, and AJWD agrees to deliver AJWD CAP Water or AJWD Recovered Water to Mesa, and to take treated water at the Delivery Point from Mesa in amounts not to exceed the Monthly Contract Quantity except in times of an AJWD Emergency, when additional amounts may be taken as provided in Section 5.2. AJWD further agrees to pay the Contract Price for such water during the Initial Term and the Extension Terms (if applicable).

4. Water Availability at AJWD Point of Delivery.

- 4.1 Mesa will make available treated water in the Monthly Contract Quantity at the AJWD Point of Delivery. Mesa will measure the quantity of water AJWD takes with a metering device that meets American Water Works Association (AWWA) Standards, located at the AJWD Point of Delivery. The metering device shall be owned, operated, and maintained by Mesa, and calibrated annually, with both Parties being given the opportunity to witness the calibration. Notwithstanding any other provision of this Agreement, Mesa will only be obligated to make available a quantity of water to AJWD equivalent to the actual quantity of AJWD's CAP Water or AJWD Recovered Water that Mesa receives from AJWD, less losses of five percent (5%).
- 4.2 During the time of an AJWD Emergency, Mesa will make available a total of 100 acre feet of Emergency Delivery Water per year in excess of the Monthly Contract Quantities at the AJWD Point of Delivery.
- 4.3 During times of Mesa Service Priority as set forth in Section 23, Mesa will have no obligation to make water available to AJWD. The authorized representative of Mesa will notify the authorized representative of AJWD of such a situation as soon as practicable.

5. Contract Price.

- 5.1 The Contract Price payable for water taken by AJWD shall consist of the following Charges:
 - 5.1.1 A Monthly Quantity Fixed Charge of six hundred dollars (\$600.00) per month, and an additional Monthly Quantity Variable Charge of three hundred sixteen dollars and fifty-two cents (\$323.00) per million gallons (or thirty-two cents per thousand gallons (\$0.32/KGal)) of water taken at the AJWC Point of Delivery.
 - 5.1.2 The Emergency Water Charge for amounts of Emergency Delivery Water of up to 100 acre feet taken during an AJWD Emergency will be one dollar per thousand gallons (\$1.00/KGal).
 - 5.1.3 In addition to the above, AJWD shall pay to Mesa a Supply Charge of twenty-five cents per thousand gallons (\$0.25/KGal) for water taken at the AJWD Point of Delivery that is in excess of the actual amount of AJWD's CAP Water or AJWD Recovered Water preordered by AJWD and actually delivered in advance to Mesa (less losses of five percent (5%)), or in the case of Emergency Delivery Water, for amounts of such water not provided to Mesa in the form of AJWD CAP Water or Recovered Water within sixty (60) days of such Emergency Deliveries.

5.2 The Contract Price Charge amounts shall be adjusted annually from the Effective Date based on the increase, if any, in the Consumer Price Index – All Urban Consumers, as published in the then current year by the United States Bureau of Labor Statistics.

6. Water Accounting for Excess Water

6.1 All of the water entering AJWD’s interconnection facility and system at the Point of Delivery in excess of the amount of AJWD CAP water or AJWD Recovered Water delivered to Mesa in advance or within sixty (60) days of an Emergency Delivery shall be accounted for as groundwater as defined in Title 45 of the Arizona Revised Statutes, AJWD shall be responsible for all compliance with the Groundwater Code and ARS 45-492 in the event and to the extent deliveries are accounted for as groundwater.

6.2 AJWD agrees to provide notice to Mesa of any AJWD Emergency and prior to taking any Emergency Delivery Water, but in no event more than one (1) business day after becoming aware of such an AJWD Emergency, and to thereafter reasonably keep Mesa updated with respect to the situation and any changes.

7. Delivery of AJWD CAP Water AJWD Recovered Water to Mesa.

7.1 Mesa will accept delivery of AJWD’s CAP Water from the CAWCD at one or more of Mesa’s CAP turnouts (as determined by Mesa), and will accept delivery of AJWD Recovered Water at the Val Vista Water Treatment Plant when CAP Water is not available, in the amount of the Monthly Contract Quantity and any AJWD Emergency Delivery Water Amounts, with losses of five percent (5%). AJWD shall be solely and exclusively responsible for all arrangements and costs of transporting AJWD CAP Water and Recovered Water to Mesa under this Agreement.

7.2 Notwithstanding any other provision of this Agreement, Mesa shall only be obligated to make available a quantity of water to AJWD equivalent to the actual quantity of AJWD's Water Mesa receives from CAWCD, plus losses of five percent (5%).

8. AJWD’s Obligations and Payments to Mesa.

8.1 AJWD agrees to pay the Contract Price and to deliver or cause to be delivered AJWD’s CAP Water or AJWD Recovered Water in the amount of the Monthly Contract Quantity in advance, and for any Emergency Delivery Water amounts within sixty (60) days of the Emergency Deliveries.

8.2 AJWD is responsible for and assumes all obligations and liabilities for the quality of water in its system and distribution to its customers once water is taken by AJWD at the AJWD Point of Delivery.

- 8.3 During times of an AJWD Emergency, as defined in Section 1.3, AJWD must notify the authorized representative of Mesa of AJWD's need to take Emergency Delivery Water pursuant to this Agreement within one business day.
- 8.4 AJWD shall preorder and schedule AJWD's CAP Water with CAWCD to ensure delivery of AJWD's CAP Water to Mesa in accordance with this Agreement. AJWD's CAP Water shall be ordered and delivered under AJWD's subcontract with CAWCD, and not under any contract or subcontract for CAP water entered into by Mesa. AJWD shall pay CAWCD for all costs related to the delivery of AJWD's CAP Water to Mesa in accordance with the subcontract between AJWD and CAWCD. Mesa shall have no obligation to CAWCD for any water scheduled and delivered under AJWD's subcontract.
- 8.5 When CAP Water is not available, AJWD may preorder and schedule AJWD Recovered Water with Salt River Project (SRP) to ensure delivery of AJWD Recovered Water to Mesa in accordance with this agreement when CAP Water is not available. AJWD Recovered Water shall be ordered and delivered under an AJWD agreement with SRP, and not under any agreement between SRP and Mesa. AJWD shall pay SRP for all costs related to the recovery and transportation of AJWD Recovered Water to Mesa's Val Vista Water Treatment Plant. Mesa shall have no obligation to SRP for any water scheduled and delivered by AJWD.

9. Water Delivered.

- 9.1 AJWD understands and agrees that the water Mesa physically makes available at the AJWD Point of Delivery may consist of CAP Water, Salt River Water, Verde River Water, Agua Fria River Water, groundwater, and/or other sources, but shall be accounted for as CAP Water or Groundwater by the Parties as set forth in this Agreement. Prior to delivery, such water will comply with applicable federal and state drinking water standards as applied to Mesa's water system. After point of delivery, AJWD is responsible for all water quality issues and compliance in the AJWD water system.
- 9.2 To comply with its requirements under Title 45, Arizona Revised Statutes, Mesa will report to ADWR the quantity of water delivered to the AJWD Point of Delivery as part of its annual report to ADWR. The quantity of water reported under this Agreement shall include five percent (5%) estimated losses. AJWD shall be solely responsible for accounting with ADWR for the debiting of AJWD storage credits for all AJWD Recovered Water delivered to Mesa under this Agreement in accordance with A.R.S. § 45-852.01. As set forth in 9.1 and 10.1 of this agreement, if AJWD fails to deliver an equivalent amount of AJWD CAP Water or AJWD Recovered Water to Mesa, excess amounts will be accounted for as groundwater pumped by AJWD as defined in Title 45 of Arizona Revised Statutes. AJWD shall be responsible for all compliance with A.R.S. § 45-492 in the event deliveries are accounted for as groundwater, and shall indemnify and hold the City of Mesa

harmless from damages resulting from such deliveries. Mesa shall have no obligation to file any other reports regarding AJWD.

10. Scheduling.

- 10.1 Before October First of each year, AJWD shall schedule an amount of CAP Water equal to the Monthly Contract Quantity for advance or concurrent delivery to Mesa.
- 10.2 AJWD shall schedule an equivalent amount of AJWD's CAP Water with CAWCD for delivery to Mesa as a replacement of the physical supply of Emergency Delivery Water amounts delivered by Mesa within sixty (60) calendar days of the corresponding Emergency Delivery. AJWD's CAP Water shall be ordered and delivered under AJWD's subcontract with CAWCD, and not under any contract or subcontract for CAP water entered into by Mesa. AJWD shall pay CAWCD for all costs related to the delivery of AJWD's CAP Water to Mesa in accordance with the subcontract between AJWD and CAWCD. Mesa shall have no obligation to CAWCD for any water scheduled and delivered under AJWD's subcontract.
- 10.3 When CAP Water is not available, AJWD may schedule an equivalent amount of AJWD Recovered Water with SRP for delivery to Mesa as a replacement of the physical supply of Emergency Delivery Water delivered by Mesa within sixty (60) days of the corresponding Emergency Delivery. This water shall be ordered and delivered under an AJWD agreement with SRP, and not under any agreement between SRP and Mesa. AJWD shall pay SRP for all costs related to the recovery and transportation of AJWD Recovered Water to Mesa's Val Vista Water Treatment Plant. Mesa shall have no obligation to SRP for any water scheduled and delivered by AJWD.

11. Billing and Payment.

- 11.1 By the 20th day of each month, Mesa will report to AJWD the quantity of water taken at the AJWD Point of Delivery for the previous calendar month. Mesa will bill AJWD the charges payable to Mesa in accordance with this Agreement.
- 11.2 AJWD must pay the amounts billed by Mesa no later than thirty (30) calendar days after the date of billing, after which the charges shall be considered past due. If AJWD fails to pay the charges within sixty (60) calendar days after the date of the billing, Mesa may cease performance under this Agreement until all past due charges are paid.

12. Indemnity and Waivers.

- 12.1 AJWD shall hold harmless, indemnify, and defend Mesa and any and all of its officers, officials, agents, and employees from and against any and all losses

incurred as a result of AJWD's failure to make the payments required under its subcontract with CAWCD.

- 12.2 AJWD shall hold harmless, indemnify and defend Mesa and its officers, officials, agents, and employees for, from and against any and all claims, demands, fines, penalties, losses, expenses, damages, obligations, liabilities, suits, actions, causes of action, proceedings, assessments, judgments and costs of every kind and nature (including attorneys' fees, experts fees and court costs) for injury to or death of any person, and for damage, destruction, or loss, consequential or otherwise, to any property, real or personal, including without limitation, property owned, occupied, used or enjoyed by Mesa, AJWD, the public, or any other person or entity, resulting or arising from or in any manner connected with; i) the non-delivery of water by Mesa under this Agreement; ii) the operation and maintenance of AJWD's water system by AJWD; iii) water quality in the AJWD system after the Point of Delivery; and iv) damage to Mesa's system to the extent resulting from a breach of the terms of this Agreement by AJWD or other actions of AJWD in taking delivery of water from Mesa's system.
- 12.3 Except for AJWD's obligations under Section 12.1 and 12.2, neither Party shall be liable to the other for any incidental, special, or consequential damages under this Agreement.

13. Insurance.

- 13.1 AJWD shall maintain in full force and effect insurance at no less than the following minimum amounts:

<i>WORKER'S COMPENSATION</i>	In accordance with requirements of the laws of the State of Arizona.
<i>COMPREHENSIVE GENERAL LIABILITY</i> (Including contractual liability covering death, bodily injury and property damage)	Combined single limit of not less than \$2,000,000 for each occurrence.
<i>AUTOMOTIVE LIABILITY</i> (Including owned, non-owned and hired vehicles)	Combined single limit of not less than \$1,000,000 for each occurrence.

- 13.2 Mesa shall be named as an additional insured in all applicable policies. All insurance policies shall provide that they shall not be canceled or modified unless thirty (30) calendar days prior written notice is given to Mesa. AJWD shall provide Mesa with a certificate of insurance evidencing such coverage and shall maintain on file with Mesa a current certificate within 30 calendar days of the purchase of the Policy. All insurance shall be issued by insurance carriers licensed to do business by the State of Arizona or by surplus line carriers on the Arizona Insurance

Commission approved list of companies qualified to do business in Arizona. All insurance and surplus line carriers shall be rated A or better by A.M. Best Company or as otherwise acceptable to Mesa.

- 13.3 AJWD's insurance coverage shall be primary insurance with respect to Mesa, its officers, agents, employees, and officials.

14. Amendments.

This Agreement may be amended only in writing, signed and approved by all Parties.

15. Entire Agreement.

This Agreement contains the entire agreement of the Parties and supersedes, any and all other agreements or understandings, oral or written, whether previous to the execution thereof or contemporaneous herewith.

16. Governing Law.

The Agreement shall be subject to, governed by and construed in accordance with the laws of the State of Arizona without regard to its choice of law provisions. Any action, suit or proceeding arising out of or relating to this Agreement shall be prosecuted in a court of competent jurisdiction in Maricopa County, Arizona, and the parties irrevocably submit to the jurisdiction of any such court.

17. Time Is of the Essence.

Time is of the essence with respect to the performance of each of the obligations, covenants and agreements contained in the Agreement.

18. Binding.

This Agreement shall be binding upon the Parties and their respective successors and assigns.

19. Joint Venture.

Nothing in this Agreement shall be deemed to create a joint venture, partnership, or any other cooperative or joint arrangement between the Parties.

20. A.R.S. Sections 12-133, 12-1518, 23-214, 35-391, 38-511, 35-393.01, 41-4401, 42-17106.

Notice is hereby provided of A.R.S. §§ 12-133, 12-1518, 23-214, 35-391, 35-393.01, 38-511, and 41-4401, to the extent applicable to contracts of the nature of this Agreement. Any other codes, statutes, rules or other provisions required by law to be a part of this Agreement are hereby incorporated as if fully set forth herein. Additionally, any obligations of Mesa under this

Agreement are subject to the appropriation and availability of funds in accordance with the laws of the State of Arizona, including the Arizona State Constitution and A.R.S. § 42-17106.

21. Authorized Representatives and Notices.

21.1 Within thirty (30) calendar days after the date this Agreement becomes effective, Mesa and AJWD shall each appoint an authorized representative to administer the provisions of this Agreement for which the authorized representative has responsibility, and notify each other of those appointments. All decisions and agreements required to be made or entered into by the authorized representative shall be binding on a Party only if it is in writing and signed by the Party's authorized representative. Each Party shall notify the other Party to this Agreement of any change in the identity of its authorized representative.

21.2 Any notice, demand, or request provided for in this Agreement shall be in writing and shall be delivered by first class United States Mail, postage prepaid, to the following addresses:

AJWD:
Attention: District Manager
Apache Junction Water District

POB 4768
Apache Junction, AZ 85178-0014

MESA:
Attention: City Manager City of Mesa
POB 1466
Mesa, AZ 85211-1466

22. Attorney Fees.

In the event that any claim, controversy or legal action arises under this Agreement, the prevailing Party or Parties shall be entitled to recover from the other Party or Parties in such action all costs, expenses and fees including, without limitation, attorney fees, incurred by said prevailing Party or Parties.

23. Mesa Service Priority.

Mesa shall not be required to make available water under this Agreement, and an emergency shall exist, at any time or under any circumstance when providing such availability would impact or disrupt the operation of Mesa's water system or Mesa's provision of water utility service to its own customers. If, however, Mesa does not make water available to AJWD under this Agreement because of an emergency condition for a period of thirty (30) consecutive days, AJWD shall not be required to pay the Monthly Quantity Fixed Charge until the first full month in which Mesa makes available amounts of water equal to the Monthly Delivery Quantity.

24. Force Majeure.

Neither Party shall be responsible for delays or failures in performance resulting from acts beyond their control. Such acts shall include, but not be limited to, acts of God, riots, acts of war, epidemics, governmental regulations imposed after the fact, fire, communication line failures, or power failures. This Section shall not excuse any delay in obligations to pay monies when due under this Agreement.

25. Cross-References.

If a cross-reference within any Agreement provision cites a particular paragraph or subparagraph number of this Agreement, it shall be a cross-reference to the cross-referenced provision and any of that particular provision's subparts.

26. The Parties agree and acknowledge that no rights to the treatment or delivery of water through and between the respective systems of the Parties beyond those expressly set forth herein are granted or conveyed. No rights to future water deliveries or utility service are granted or conveyed by Mesa pursuant to this Agreement. Any and all water treatment, delivery, and payment obligations subsequent to termination of this Agreement must exclusively be the subject of a separate written agreement between the parties, and neither party shall have any obligation to negotiate or enter such a contract as a result of this Agreement.

27. Survival.

AJWD's obligation to pay Mesa for any treated water delivered before termination of this Agreement, and to indemnify Mesa in accordance with Section 13, shall survive the termination of this Agreement.

CITY OF MESA

By: _____

Christopher J. Brady
City Manager

Date: _____

ATTEST:

City Clerk

Approved as to Form:

Mesa City Attorney

APACHE JUNCTION WATER DISTRICT

By: _____

Bryant Powell
Apache Junction Water District Manager

Date: _____

ATTEST:

Apache Junction Water District Clerk

Approved as to Form:

Apache Junction Water District Attorney