

**INTERGOVERNMENTAL AGREEMENT REGARDING FUNDING, PLANNING,
CONSTRUCTION AND OPERATION OF THE EFFLUENT INTERCONNECT
PIPELINE PROJECT**

This Intergovernmental Agreement (“IGA”) dated this _____ day of _____, 2015, is entered into by and between the CORTARO-MARANA IRRIGATION DISTRICT a political subdivision of the State of Arizona (“CMID”), METROPOLITAN DOMESTIC WATER IMPROVEMENT DISTRICT, a municipal subdivision of the State of Arizona (“MDWID”), PIMA COUNTY, a body politic and corporate, a political subdivision of the State of Arizona (“Pima County”) (collectively the “Local Parties”) and the BUREAU OF RECLAMATION (“Reclamation”) (collectively the “Participants”).

SECTION I. RECITALS.

The following recitals represent the general principles to which the parties have agreed.

- 1.1 The Local Parties are empowered by A.R.S. Title 11, Chapter 7, Article 3 to enter into this IGA.
- 1.2 Pima County owns and operates the Tres Rios Wastewater Reclamation Facility which treats wastewater to produce Effluent.
- 1.3 Multiple entities, including Reclamation and MDWID, have a right under separate agreements to the use of a portion of the Effluent produced by the Tres Rios Wastewater Facility.
- 1.4 CMID has obtained a renewed Facility Permit issued by ADWR for a CMID Groundwater Savings Facility (“Facility”), permit number 72-538100.0007 with an expiration date of March 25, 2019. CMID anticipates renewing this permit.
- 1.5 Reclamation and MDWID have secured Water Storage Permits from ADWR that allow them to accrue Long-term Storage Credits (“LTSCs”) by delivering Effluent to the Facility for CMID to use instead of Pumped Water (as defined below).
- 1.6 MDWID has entered into a Storage Agreement with CMID which allows MDWID to deliver Effluent to the Facility for use by CMID and Reclamation is in the process of negotiating a Storage Agreement with CMID to allow Reclamation to deliver Effluent to the Facility for use by CMID.
- 1.7 CMID’s use of Effluent instead of Pumped Water, in accordance with the terms of the Facility Permit and the MDWID and Reclamation Water Storage Permits, will result in the accrual of LTSCs by MDWID and Reclamation.
- 1.8 The Participants can benefit from jointly planning, funding, designing, permitting, constructing and operating a temporary effluent interconnection pipeline from the Tres Rios Wastewater Reclamation Facility to the CMID termination manhole at the end of the existing CMID effluent line and an ADWR-compliant measuring device, all as more fully set forth on Exhibit B (the “Project”), because the Project

will enable the delivery of Effluent to the Facility and the use of the Effluent by CMID in lieu of Pumped Water to support the development of LTSCs.

- 1.9 The Local Parties wish to facilitate, and Reclamation wishes to effectuate, the federal obligations to the Tohono O’odham Nation under the provisions of the 1982 Southern Arizona Water Rights Settlement Act (“SAWRSA”), as amended by Title III of the 2004 Arizona Water Settlements Act.
- 1.10 The development of LTSCs by Reclamation through use of Project capacity to deliver Effluent to CMID will help meet the Federal obligations under SAWRSA.

NOW THEREFORE, in consideration of the mutual promises and covenants contained herein, the parties covenant and agree as follows:

SECTION II. DEFINITIONS.

The following terms have the meanings set forth below when capitalized in this IGA:

- 2.1 “ADWR” means the Arizona Department of Water Resources.
- 2.2 “Authorized Representative” means the person designated in writing to act on behalf of a Participant in the implementation of this IGA.
- 2.3 “Capital Expenditures” means monetary or in-kind contributions for the design, permitting, construction, replacement or repair, to the capital infrastructure constituting the Project, but excluding normal operation and maintenance and repairs from normal wear and tear.
- 2.4 “CMID” means the Cortaro-Marana Irrigation District, a political subdivision of the State of Arizona.
- 2.5 “CWUA” means the Cortaro Water Users’ Association, an Arizona non-profit corporation that acts as CMID’s operating agent.
- 2.6 “Easement” means temporary use of Pima County property for construction, operation and maintenance of the Project.
- 2.7 “Effluent” means wastewater that has received a minimum of secondary wastewater treatment.
- 2.8 “Facility” means the CMID Groundwater Savings Facility identified by the Facility Permit.
- 2.9 “Facility Permit” means the permit issued by ADWR for the Facility under facility permit number 72-538100.0007 with an expiration date of March 25, 2019, as amended or extended by ADWR.

- 2.10 “Facility Plan of Operation” means the Facility Plan of Operation referenced in the Facility Permit, as amended from time to time by CMID and accepted by ADWR.
- 2.11 “IGA” means this Intergovernmental Agreement.
- 2.12 “Long-Term Storage Credit” or “LTSC” means a storage credit issued by ADWR for Effluent stored in the Facility.
- 2.13 “MDWID” means the Metropolitan Domestic Water Improvement District, a municipal subdivision of the State of Arizona.
- 2.14 “Participant” means any of the named parties that execute this IGA and any entity added as a party pursuant to a subsequent amendment to this IGA.
- 2.15 “Pima County” means Pima County, a body politic and corporate, a political subdivision of the State of Arizona
- 2.16 “Project” means the temporary effluent interconnection pipeline, any extension, improvement or addition of electric lines, an electric pump and the ADWR-compliant measuring device described in Recital 1.8 above and as more fully set forth in Exhibit B attached hereto and incorporated herein by this reference.
- 2.17 “Project User” means a Storer that has or obtains a right to the use of Project capacity in accordance with the terms of this IGA. The initial Project Users are Reclamation and MDWID.
- 2.18 “Pumped Water” means water withdrawn from any of the wells listed in the Facility Plan of Operation and designated by the ADWR as pumping groundwater for the purpose of Title 45 of A.R.S. Chapter 3.1.
- 2.19 “Reclamation” means the United States Bureau of Reclamation.
- 2.20 “Storage Agreement” means an agreement between the Storer and CMID.
- 2.21 “Storer” means a person holding a Water Storage Permit to store Effluent in the Facility.
- 2.22 “Tres Rios Wastewater Reclamation Facility” means the wastewater treatment facility (formerly known as the Ina Road Wastewater Treatment Facility) owned and operated by Pima County.
- 2.23 “Voting Rights” means the right to cast one vote on those matters specified in this IGA.
- 2.24 “Voting Participants” means those Participants with Voting Rights. The initial Voting Participants are Reclamation, CMID, and MDWID. Pima County may become a Voting Participant pursuant to Section 7.2 below. Other Participants,

when added through an amendment to this IGA, may become Voting Participants pursuant to Section 8.1, below.

- 2.25 “Water Storage Permits” means a permit from ADWR to store Effluent in the Facility.

SECTION III. PURPOSE.

- 3.1 The purpose of this IGA is to set forth the terms and conditions for funding, developing, constructing and operating the Project. This IGA does not address, and shall not be construed to affect, the recovery of any LTSCs developed from Effluent delivered through the Project.

SECTION IV. PROJECT DESIGN, CONSTRUCTION, OPERATION, AND CESSATION.

- 4.1 Reclamation, in consultation with the other Participants, agrees to design the Project. The target capacity for the Project is 1,920 acre-feet per year to 2,200 acre-feet per year. The final design of the Project shall be subject to the unanimous approval of the Participants. MDWID, in consultation with the other Participants, agrees to cause the Project to be constructed. MDWID shall own the Project.

- 4.2 CMID, acting through its operating agent CWUA, agrees to operate, maintain, and repair (“OM&R”) the Project in accordance with agreements entered into between CMID and CWUA. CMID shall have full right of access to the Project to carry out its rights and obligations under this IGA.

4.2.1 CMID shall measure, record, and report all Effluent delivered through the Project to the CMID effluent line, in accordance with the Storage Agreements. The point of measurement shall be at the ADWR-compliant measuring device to be installed at the Tres Rios Wastewater Reclamation Facility as part of the Project.

4.2.2 Unless Project Users agree otherwise and provide written notice to CMID, CMID shall record the share of Effluent delivered through the Project to CMID on behalf of each Project User in accordance with each Project User’s share of Project capacity. For example, if in a given period CMID delivers 100 acre-feet of Effluent through the Project and if Reclamation and MDWID, as Project Users, each have a fifty percent (50%) right of use of Project capacity, CMID shall record fifty (50) acre-feet of Effluent as being delivered on behalf of Reclamation and fifty (50) acre-feet of Effluent as being delivered on behalf of MDWID.

4.2.3 All Project Users shall provide CMID with such data as CMID requires for preparation of ADWR-required reports relating to the delivery of Effluent through the Project to CMID.

4.2.4 All Participants shall have access to data submitted by all other Participants for preparation of ADWR-required reports relating to the delivery of Effluent

through the Project to CMID, except for any information returned by CMID as unnecessary or mistakenly provided.

4.2.5 CMID may contract with other qualified parties to meet the operational requirements of the Project.

- 4.3 MDWID agrees, upon termination of this IGA or upon cessation of use of the Project, whichever first occurs, to cause Pima County's property to be restored to its pre-Project condition, including removal of all materials and equipment.
- 4.4 All persons performing work on the Project shall hold appropriate licenses, secure all necessary consents, permits, bonds and appropriate insurance to ensure the work complies with all applicable laws and the Participants are protected against any and all claims arising from the construction and operation of the Project.
- 4.5 No Participant shall have a duty or take any action requiring the expenditure of funds on the Project unless the Voting Participants have authorized the expenditure, or funds are otherwise available and may be legally obligated for such purpose, subject to CMID's rights under Section 8.2.4, below

SECTION V. FUNDING OF CAPITAL EXPENDITURES AND OM&R COSTS.

- 5.1 MDWID and Reclamation shall each pay fifty percent (50%) of the Capital Expenditures up to a cap of One Hundred Thousand Dollars (\$100,000.00) each, for a combined total expenditure of up to Two Hundred Thousand Dollars (\$200,000.00) for the Project. Reclamation and MDWID may mutually agree to exceed this cap, in which event Reclamation and MDWID shall each pay fifty percent (50%) of the exceedance.
 - 5.1.1 MDWID shall, in its capacity as construction manager, invoice Reclamation on a quarterly basis, beginning in the month following the first quarter of construction activity.
- 5.2 CMID shall pay the routine OM&R costs of the Project, including the cost of power to operate the Project following completion thereof.
- 5.3 The Project Users shall pay costs relating to unusual wear, tear and repairs and all replacements in proportion to each Project User's right to use Project capacity, unless otherwise agreed in writing between or among the Project Users.
- 5.4 The Project Users, including any Project User that has withdrawn as a Voting Participant from this IGA in accordance with Section 7.4 below, shall share in the costs of removal and restoration incurred by MDWID under Section 4.3 above. The amount each shall pay shall be established by procedures adopted by the Authorized Representatives, which, after a Voting Participant has withdrawn, may not be changed in a manner which negatively impacts the withdrawing entity.

SECTION VI. PIMA COUNTY EASEMENT.

6.1 Pima County has recorded a temporary easement attached hereto as Exhibit A, which authorizes use of Pima County land by MDWID and CMID for the construction and operation of the Project.

SECTION VII. USE OF PROJECT CAPACITY AND WITHDRAWAL FROM PROJECT.

7.1 Reclamation and MDWID shall be the initial Project Users and shall initially each have a right to use fifty percent (50%) of Project capacity, subject to Pima County becoming a Project User under Section 7.2 below and subject to other entities becoming Project Users by obtaining a percentage of Project capacity as agreed to by the Authorized Representatives under Section 8.1 below.

7.2 In the event Pima County becomes a Storer, Pima County may, in its sole discretion, pay up to one-third (1/3) the prior Capital Expenditures of the Project. Pima County shall thereafter be a Voting Participant and a Project User and have a right to use a percentage of Project capacity equivalent to the percentage of prior Capital Expenditures paid by Pima County. Reclamation and MDWID capacity use rights shall be reduced accordingly in equal amounts. For example, if Pima County becomes a Storer and pays for twenty percent (20%) of prior Capital Expenditures, Pima County shall become a Voting Participant and Project User and shall have a right to use twenty percent (20%) of Project capacity. MDWID and Reclamation thereafter shall each have a right to use forty percent (40%) of Project capacity.

7.3 Project Users may at any time through mutual written agreement alter their respective percentages of Project capacity use rights subject to such terms and conditions as may then be agreed upon in writing. Project Users shall promptly provide copies of any such written agreements to all other Participants.

7.4 A Voting Participant may permanently withdraw from the Project by paying its proportionate share of all costs authorized under the IGA prior to its provision of written notice of its withdrawal. Withdrawal shall not excuse the Voting Participant from paying its proportionate share of MDWID costs incurred under Section 4.3 above as determined in accordance with procedures to be established by the Authorized Representatives.

7.5 Any Project User not using their allocated share of the Project's capacity shall make their unused capacity available to third parties upon terms and conditions established by the Authorized Representatives of the Voting Participants, subject to the third party becoming a Storer.

7.6 No Participant shall be required to store Effluent in the Facility, except as may be agreed under a separate Storage Agreement.

SECTION VIII. AUTHORIZED REPRESENTATIVES.

- 8.1 The Authorized Representatives of the Voting Participants, consistent with this IGA, may: (1) establish procedures under which additional Storer may become Voting Participants and Project Users; (2) establish procedures under which a Storer provides notice of the quantity of allocated capacity which might be made available in a particular calendar year for use by third parties; (3) establish the procedure consistent with Section 7.4 above, by which the Participants may exercise their right to withdraw from active participation in the Project prior to termination of this IGA; (4) amend or supplement the provisions of this IGA relating to Project OM&R; (5) allocate extraordinary costs following construction of the Project; (6) allocate the Project's unused capacity relinquished on either a temporary or permanent basis by a Project User, and (7) establish procedures to implement this IGA and coordinate and ensure operation of the Project.
- 8.2 The procedure that the Authorized Representatives shall follow to make decisions is set forth as follows:
- 8.2.1 Annual Meeting: There will be at least one annual meeting of the Authorized Representatives of Participants to review the previous calendar year's operation of the Project, exchange data and plan for the upcoming 12 month period, including providing notice of the amount of Effluent each Participant intends to store at the Facility the next calendar year and a projection of the amount of Effluent that each Participant anticipates to store at the Facility for the next two calendar years. The purpose of annual meetings is to both facilitate reporting compliance and to assist in the mutual planning by the Participants. Timely provision of information to CMID under this Section VIII is a material term of this IGA
- 8.2.2 Scheduling Meetings: CMID shall, upon its own initiative, or at the request of an Authorized Representative, schedule meetings of Authorized Representatives as necessary to meet CMID's needs for data required to operate the Facility, to resolve Project-related issues among the Participants, to expeditiously resolve any discrepancies within the draft annual storage report, or to enable timely filing of the final annual storage report with ADWR. CMID may schedule an item for inclusion on the agenda of a meeting. An Authorized Representative may request that CMID include additional matters on the agenda and such matters shall be included by CMID
- 8.2.3 Chair: CMID shall preside over all duly called meetings. In the event of the absence of CMID, the Voting Participants in attendance at the meeting may select a chair from the Voting Participants. CMID or selected chair shall be responsible for securing the preparation of the meeting minutes.
- 8.2.4 Voting Rights/Decisions: Each Voting Participant shall have one vote. All decisions related to the Project and not otherwise included in the terms of this IGA must be authorized by unanimous vote of the Authorized Representatives of all Participants with Voting Rights at the time of the

vote. No vote may be taken unless each Voting Participant has an Authorized Representative present at the meeting. In the case of a failure to secure a unanimous vote supporting an action, there shall be no alterations to the status quo. Notwithstanding the foregoing, CMID, after notice to the Participants, shall have the authority to suspend operation of the Facility when it reasonably determines such an action is essential to maintaining compliance with the Facility Permit, State or Federal law, with any order of a court or agency or to maintain the operational integrity of CMID. Upon the request of any Participant, CMID shall further confer with the Participants within one (1) business day of receiving the request and provide additional information as to the action and the need therefore. CMID will make a good faith effort to adjust its action to address concerns expressed by the Participants. In the event any Participant whose deliveries are impacted by CMID's action objects thereto and specifies what alternative action by CMID would be acceptable, CMID shall have the burden of demonstrating its actions(s) were/are reasonable under the circumstances in the event any Participant pursues remedies under Section 9.18 below.

SECTION IX. MISCELLANEOUS PROVISIONS

- 9.1 Force Majeure: In the event any Participant is rendered unable, wholly or in part, by force majeure reasons to carry out its obligations under this IGA, the obligations of the other Participants so far as they are affected by such force majeure shall be suspended during the continuance of any inability so caused, but for no longer period; and such cause shall be so far as possible remedied with the best efforts of the disabled Participant and with all reasonable dispatch. The term "force majeure" as employed in this IGA shall mean acts of God, strikes, lockouts or other industrial or labor disturbances, acts of the public enemy, wars, blockades, insurrections, riots, epidemics, land slides, lightning, earthquakes, fires, storms, floods, washouts, droughts, unavoidable interruptions in electric power to drive pumps, interruptions by government not due to the fault of Participants including injunctions, civil disturbances, explosions, well collapses, breakage or accident to machinery or transmission facilities, or action or non-action by governmental bodies in approving or failing to act upon applications for approvals or permits which are not due to the negligence or willful action of the Participants. Nothing herein contained shall be construed as requiring any Participant to settle a strike or labor dispute against its will. Nothing herein shall prohibit any Participant at its own expense from using whatever self-help remedies may be available to it.
- 9.2 Precedential Effect: This IGA, the Facility Permit, any Storage Permits, and Recovery Permits or any actions taken or any determinations made by the Participants or ADWR in furtherance thereof regarding the validity, invalidity, nature, legal character, extent or relative priority of a water right or source of water is not binding on the Participants for any other purpose, and shall not create a presumption of the validity, invalidity, nature, legal character, extent or relative priority of a water right or water source in any other administrative proceeding or

any judicial proceeding, other than in an action to enforce this IGA. This IGA, the Facility Permit, any Storage Permits, the Recovery Permits, or any actions taken in furtherance thereof shall in no way preclude any Participant from applying for or challenging any future facility permits, or any storage or recovery permits associated with any future facility permit issued pursuant to A.R.S. § 45-801.01 *et seq.*, or waive any legal objection or theory that may be raised in support of or against such application.

9.3 **Calculation of LTSCs:** The calculation of LTSCs at the Facility shall be in accordance with Arizona state law and in accordance with the Storage Agreements entered into between each Project User and CMID.

9.4 **Compliance with Laws:** To the extent applicable to each Participant, the Participants shall comply with federal, state and local laws, rules regulations, standards and executive orders, without limitation to those designated within this IGA.

9.4.1 *Anti-Discrimination:* The provisions of A.R.S. § 41-1463 and Executive Order 75-5, as amended by Executive Order 99-4, issued by the Governor of the State of Arizona are incorporated by this reference as a part of this IGA as if set forth in full herein.

9.4.2 *Americans with Disabilities Act:* This IGA is subject to all applicable provisions of the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. §§12101-12213) and all applicable federal regulations under the Act, including 28 CFR Parts 35 and 36, the pertinent provisions of which are incorporated into and made part of this IGA as if set forth in full herein.

9.4.3 *Conflict of Interest:* This IGA is subject to termination for conflict of interest pursuant to A.R.S. §38.511, the pertinent provisions of which are incorporated into and made part of this IGA as if set forth in full herein.

9.4.4. *Open Meeting Law:* The Participants shall comply with the Arizona Open Meetings Law, A.R.S. §38-431, et seq., to the extent applicable to meetings of the Participants.

9.5 **Default:** In the event of default by any Participant for failure to perform pursuant to the terms of this IGA, the non-defaulting Participants shall notify the defaulting Participant of the default. Said notice(s) shall be in writing and shall state the facts constituting default, including the date and time (if possible) such default is deemed to have occurred, and shall further set forth what action is necessary in the non-defaulting Participants' opinion to cure the default. If the non-defaulting Participants deem no cure possible, the notice(s) shall so state. The defaulting Participant shall have a reasonable time from notice to cure the default. In the event the default is not cured within such time, the Participants shall meet at least once to attempt to resolve said differences. It is agreed that at the time when the Participants are attempting to resolve their differences with respect to an alleged default, the Participants shall continue to fulfill their obligations pursuant to the balance of the

provisions of this IGA and such continuance shall not in any way waive the default. If, at the end of sixty (60) days from the date of notice of default, the Participants are unable to resolve their differences, then the Participants shall have all rights and remedies available to them under law including specific performance.

- 9.6 Attorney's Fees: In the event of any litigation between the Participants to enforce any provision of this IGA or any right of either Participant hereto, the unsuccessful Participant to such litigation agrees to pay to the successful Participant all reasonable costs and expenses, including reasonable attorney's fees, incurred therein by the successful Participant, all of which shall be included in and as part of the judgment rendered in such litigation. The United States shall be exempt from the requirement to pay attorney's fees in the absence of express federal statutory authorization to pay such attorney's fees.
- 9.7 Assignment of IGA: No Participant shall have the right to assign this IGA or any interest herein except to their respective successors. This Section shall not limit the Participant's rights to assign, transfer, or sell LTSCs developed through use of the Project.
- 9.8 Notices: All notices shall be in writing and together with other mailings pertaining to this IGA shall be made to the following persons at the addresses listed below which may be changed at any time by providing written notice to each Participant:

Pima County:

The County Administrator of the Pima County
County Administrator's Office
Pima County Governmental Center
130 W. Congress St., 10th Fl.
Tucson, AZ 85701

With a copy to:

Pima County Attorney
1400 Legal Services Building
32 N. Stone, Ave.
Tucson AZ 85701-1412

MDWID:

General Manager
Metro Water District
PO Box 36870
Tucson, AZ 85740

With a copy to:

Lewis, Roca Rothberger P.L.C.
One S. Church Ave, Suite 700
Tucson, AZ 85701-1611

CMID

General Manager
Cortaro-Marana Irrigation District
12253 W. Grier Road
Marana, AZ 85653

With a copy to:

Curtis, Goodwin, Sullivan,
Udall & Schwab, P.L.C.
501 E. Thomas Rd
Phoenix, AZ 85012-3205

CWUA:

Chairman of the Board
Cortaro Water User's Association
12253 W. Grier Road
Marana, AZ 85653

With a copy to:

Curtis, Goodwin, Sullivan,
Udall & Schwab, P.L.C.
501 E. Thomas Rd
Phoenix, AZ 85012-3205

Reclamation:

Phoenix Area Office Manager
Bureau of Reclamation
6150 W. Thunderbird Road
Glendale, AZ 85306-4001

With a copy to:

U.S. Dept. of Interior, Field Solicitor
6150 W. Thunderbird Rd
Glendale, AZ 85306-4001

- 9.9 Waiver: Waiver by any Participant of any breach of any term, covenant or condition herein contained shall not be deemed a waiver of any other term, covenant or condition, or any subsequent breach of the same or any other term, covenant, or condition herein contained.
- 9.10 Amendment: This IGA shall not be amended except by written instrument mutually agreed upon and executed by the Participants.
- 9.11 Entire Agreement: This IGA, its Exhibits and its recitals which are included herein, constitute the entire agreement between the Participants, and includes all prior oral and written agreements of the Participants. All warranties and guarantees and representations shall survive during the life of this IGA.

- 9.12 Construction and Interpretation: All provisions of this IGA shall be construed to be consistent with the intention of the Participants expressed in the recitals hereof.
- 9.13 Time of the Essence: Time is of the essence in the exercise of all rights and the discharge of all responsibilities and obligations by each of the Participants hereto.
- 9.14 Authority: Each of the undersigned Local Parties represents it has properly and legally authorized and executed this IGA.
- 9.15 Legal Jurisdiction: Nothing in this IGA shall be considered as either limiting or extending the legal jurisdiction of any Participant.
- 9.16 Severability: In the event that any provision of this IGA or the application thereof is held invalid, such invalidity shall have no effect on other provisions and their application which can be given effect without the invalid provision, or application, and to this extent the provisions of this IGA are severable.
- 9.17 Contingent upon Appropriation or Allotment of Funds: The expenditure or advance of any money or the Performance of any obligation by the United States or any other Participant, in any of their respective capacities, under this IGA shall be contingent upon appropriation of funds therefor. In the event funds are not appropriated, no liability shall accrue to the United States or any other Participant, in any of their respective capacities. No Participant shall be obligated to expend funds for dues, operational costs, Capital Expenditures, or any other costs or expenses, except as expressly detailed in the Facility Plan of Operation, unless such expenditure is expressly authorized by each Participant which must appropriate the required funds.
- 9.18 Non-Binding Alternative Dispute Resolution: The following non-binding alternative dispute resolution process shall be followed for any dispute between the Participants arising under this IGA:
- 9.18.1 The disputant Participants shall meet and confer about any controversy or claim arising out of or related to this IGA, or the breach thereof, in an attempt to resolve the matter. If the matter cannot be resolved between the respective Participants, each shall appoint one arbitrator to a three-party panel of arbitrators who will decide the dispute. The appointment of the two arbitrators will occur within thirty (30) days of the meeting referred to above.
- 9.18.2 Arbitrators appointed to the arbitration panel should be skilled and experienced in the field or fields that pertain to the dispute. The two selected arbitrators shall meet within 30 days of the later of the two arbitrator's appointment, and at their first meeting they shall appoint a third neutral arbitrator to complete the arbitration panel. The third arbitrator shall

act as a chairperson of the arbitration panel and shall direct the arbitration proceedings.

9.18.3 The arbitration process shall be limited to the matter submitted by the respective Participants. The arbitration panel shall not rewrite, amend, or modify this IGA or any other agreement or contract between the Participants.

9.18.4 There shall be no discovery beyond the information and documents made available during the informal meet and confer process provided for in this section and the exchange of information or documentation provided for in this IGA.

9.18.5 No formal evidentiary hearing shall be provided unless one is requested by either Participant in writing, at the same meeting that the neutral arbitrator is appointed. Assuming that no hearing has been requested, the arbitration panel will meet as deemed necessary by the panel and shall, in a manner it deems appropriate, receive evidence, receive argument or written briefs from the respective Participants, and otherwise gather whatever information is deemed helpful by the panel. The arbitration process to be followed shall be informal in nature, and the respective Participants shall not be entitled to trial-type proceedings under, for example, formal rules of evidence.

9.18.6 In the event that either Participant requests a hearing, the arbitration panel shall meet to receive evidence, receive argument and written briefs from the respective Participants as follows:

9.18.6.1 The arbitration panel shall, within five (5) days of the appointment of the neutral arbitrator, schedule a date for a hearing that shall be held within sixty (60) days of the appointment of the neutral arbitrator.

9.18.6.2 Within ten (10) days of the appointment of the neutral arbitrator, the Participants shall each submit a brief of no longer than fifteen (15) pages setting forth its case. The brief shall include discussion of all issues relevant to the party's case. Each party shall, as an attachment to its brief, include declarations of not more than two experts and any relevant factual witness. Declarations of expert witnesses must include all opinions to be elicited upon direct testimony and a complete explanation of the basis of these opinions. Disputes with respect to the sufficiency of declarations or the appropriateness of the testimony shall be resolved by the witnesses available for cross-examination at the time of the arbitration hearing. Factual witnesses for whom a declaration is prepared shall be made available for cross-examination at the time of the arbitration hearing only if requested by the other party.

9.18.6.3 Each party shall have the opportunity, within five (5) days of the close of hearing, to submit a closing brief not to exceed ten (10) pages. The closing brief shall be argument with no additional factual evidence to be submitted.

9.18.6.4 There shall be no testifying witness on direct except for expert witnesses.

9.18.6.5 Each party shall have a maximum of four (4) hours to present its case in total. This time shall include opening and closing statements, direct presentation and any cross-examination of the other party's witnesses. Each party shall have the right to reserve part of its time to present up to one (1) hour of rebuttal testimony.

9.18.6.6 The matter shall be deemed submitted at the submission of closing briefs.

9.18.6.7 The panel of arbitrators shall render its final decision in the dispute within sixty (60) days after the date of naming the third arbitrator. If the arbitrators disagree as to the determination, any two of the three arbitrators may join to form a majority and the decision of those two arbitrators will be final for the panel. The panel will issue a written decision for the Participants.

9.18.6.8 The decision of the arbitrators shall be a non-binding decision. Any Participant may thereafter pursue any remedy otherwise available to it. Nothing herein shall be construed as a waiver of the sovereign immunity of the United States. The decision of the panel and record of the arbitration shall not be privileged and may be submitted as part of the record in any forum by any Participant.

9.18.7 The Participants participating in the alternative dispute resolution process shall share all costs incurred by the arbitration panel equally, and the expenses of the arbitration panel shall be paid expeditiously.

9.18.8 During the period of time in which a disagreement is being addressed in this Alternative Dispute Resolution process or appropriate judicial proceeding, the Participants agree that no default or breach of any agreement being addressed in the process will have occurred.

SECTION X. TERM

10.1 This IGA, or any amendment of this IGA, shall not be of any force or effect until properly executed by all of the named parties.

10.2 The term of this IGA shall expire on March 25, 2019, unless terminated earlier or extended by mutual agreement of the Participants.

IN WITNESS WHEREOF, the Participants hereto have hereunto set their hands the day and year first above written.

[SIGNATURE PAGE FOLLOWS]

CORTARO MARANA IRRIGATION DISTRICT

By: _____
Chair of the Board

APPROVED AS TO FORM

ATTEST:
By: _____
Clerk of the Board

By: _____
District Attorney

METROPOLITAN DOMESTIC WATER IMPROVEMENT DISTRICT

By: _____
Chair of the Board

APPROVED AS TO FORM

ATTEST:
By: _____
Clerk of the Board

By: _____
District Attorney

PIMA COUNTY

By: _____
CHAIR, BOARD OF SUPERVISORS

APPROVED AS TO FORM

ATTEST:
By: _____
Clerk of the Board

By: _____
County Attorney

BUREAU OF RECLAMATION

By: _____
PHOENIX AREA OFFICE MANAGER

APPROVED AS TO
LEGAL SUFFICIENCY:

By: _____
Regional Solicitor

ATTORNEY CERTIFICATION

The foregoing Intergovernmental Agreement, being an agreement between the Local Governments established under the authority of the State of Arizona, has been reviewed pursuant to A.R.S. § 11-952 by the undersigned Attorneys of Record for the various local governments, all of whom have determined that it is in proper form and is within the powers and authority granted under the laws of the State of Arizona to those local governments, represented by the following undersigned:

By: _____
Attorney for Cortaro Marana Irrigation District

This ____ day of _____, 2015.

By: _____
Attorney for Metropolitan Domestic Water Improvement District

This ____ day of _____, 2015.

By: _____
Attorney for Pima County

This ____ day of _____, 2015.