

December 28, 2018

Exhibit \_

## Gila River Indian Community

### Extraordinary Conservation Intentionally Created Surplus (EC ICS) Project

1. Summary:

The Gila River Indian Community (Community) is a traditional agrarian society that is located on the Gila River Indian Reservation (Reservation) just south of the Phoenix metropolitan area. The Arizona Water Settlements Act (AWSA), Pub. L. 108-451, guarantees the Community's right to receive 311,800 acre-feet per year (AFY) of mainstream Colorado River water, which is delivered through the Central Arizona Project (CAP) and held in trust by the United States on behalf of the Community. Pursuant to the AWSA and the Gila River Indian Community Water Rights Settlement Agreement the Community can use its Colorado River water on its Reservation, use this water off-Reservation in specified Arizona counties, lease this water in specified Arizona counties, or exchange this water in specified Arizona counties. The Community leases or exchanges some of its Colorado River water in Arizona but primarily uses the majority of its Colorado River water for two types of beneficial uses:

- a. Irrigation of lands on its Reservation; and
- b. Storage in groundwater savings facilities (GSFs) and underground storage facilities (USFs)<sup>1</sup> to create Long Term Storage Credits (Storage Credits).

The Colorado River Interim Guidelines for Lower Basin Shortages and Coordinated Operations of Lake Powell and Lake Mead (2007 Guidelines) and the Lower Colorado Basin ISC Forbearance Agreement (Forbearance Agreement) provide a framework for water users to create EC ICS and protect water levels in Lake Mead. The Community has quantities of Colorado River water that are currently used to create Storage Credits. As part of the State of Arizona's implementation of the Lower Basin Drought Contingency Plan (LBDCP) the Community is willing to bolster water levels in Lake Mead through extraordinary conservation efforts authorized under the 2007 Guidelines that will reduce use of mainstream Colorado River water, instead of using this water to create Storage Credits.

2. Historic Use of Colorado River Water:

Beginning in 2010, the Community began storing some of its Colorado River water it did not otherwise need for irrigation in an effort to maximize its use of Colorado River water until the completion of its new irrigation infrastructure construction and the rehabilitation of its existing irrigation infrastructure. This infrastructure project is scheduled to be completed by 2030 upon which time the Community will reevaluate how much Colorado River water it needs to meet its long-term irrigation demands on its Reservation.

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<sup>1</sup> The Community currently stores water in an on-Reservation USF and off-Reservation USFs. The Community has plans to develop additional USFs on its Reservation to expand its on-Reservation storage capacity.

In furtherance of its goal to maximize its Colorado River water use, the Community, and other entities through lease/exchange with the Community, used close to its full of entitlement of Colorado River water in 2017 (311,414 acre-feet). Not including leased or exchanged water, from 2013-2017 the Community used an average of 233,530 AFY of Colorado River water for on-Reservation irrigation, GSFs/USFs storage, or system conservation.

As furtherance of extraordinary conservation efforts the Community is prepared to significantly curtail GSF and USF storage activities and forgo some of the revenue associated with Storage Credits in furtherance of the State of Arizona's implementation of the LBDCP. Since 2010 the Community has created approximately 150,000 Storage Credits per year. These Storage Credits are transferable. The present market value of Storage Credits can vary but is typically between \$300 and \$400 per credit.<sup>2</sup>

3. Type:

The Community agrees to develop EC ICS through "other extraordinary conservation measures, including but not limited to, development and acquisition of a non-Colorado River System water supply used in lieu of Mainstream water within the same state".

4. Term: 2019-2026.

5. Project Description:

The Community will reduce the quantity of Colorado River water requested for delivery via CAP. The Community will conserve mainstream Colorado River water in a given year by forgoing opportunities to deliver Colorado River water to GSFs and USFs with whom the Community would have otherwise stored water for the purpose of creating Storage Credits, the sale of which would have generated revenue necessary to cover the Community's long-term water costs.

6. Annual EC ICS Creation Amount:

The annual amount of EC ICS created by this program shall not exceed 150,000 acre-feet.

7. Quantification:

The conserved water yield for foregoing storage opportunities will be based on the Community's historic use of Colorado River water and deliveries to GSFs/USFs that would have been made in the year that EC ICS is being created based upon available storage space at the GSFs/USFs that would agree to take delivery of the Community's Colorado River water.

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<sup>2</sup> Proceeds from Storage Credit sales were used to establish, and are used to augment, the Community's Permanent Water Fund. The Permanent Water Fund was established by the Community to generate income in perpetuity to be used to cover water costs associated with restoring the Community's traditional agricultural economy and restoring portions of the Gila River on its Reservation.

With respect to available storage space at GSFs/USFs, as part of its annual plan of creation the Community will provide letters from GSFs/USFs certifying that capacity exists and that agreements to store the water are in place.

The baseline for the Community’s historic use of its Colorado River water will be the rolling five-year average of Community Colorado River water delivered for on-Reservation use, delivered to off-Reservation GSFs/USFs, and used for conservation (Average Use). In determining the Average Use, the year immediately preceding the year in which EC ICS will be created pursuant to this Exhibit \_\_ shall not be used when calculating the Average Use. For example, if the Community created EC ICS under this Exhibit \_\_ in 2019, the Average Use would be calculated using years 2013-2017, but not year 2018.

The 2013-2017 Colorado River water deliveries, or conservation, in acre-feet for annual Community use and the five-year Average Use are shown in the table below:

Year	Off-Reservation Storage	On-Reservation Use & Storage (or Conservation)	Total Use
2013	189,652	58,569	248,221
2014	178,592	56,843	235,435
2015	166,018	31,988	198,006 <sup>3</sup>
2016	174,170	68,093 <sup>4</sup>	242,263
2017	148,765	94,960 <sup>5</sup>	243,725
Average	171,439	62,091	<b>233,530</b>

The amount of water conserved for forgoing storage opportunities shall not exceed the Community’s five-year Average Use of Colorado River water, less:

- a. Deliveries of Community Colorado River water to GSFs/USFs located on or off the Reservation in the year EC ICS is created;
- b. Deliveries of Community Colorado River water to its Reservation for irrigation in the year EC ICS is created; and
- c. Any Community Colorado River water conserved pursuant to a system conservation agreement or other Community ICS exhibit in the year EC ICS is created.

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<sup>3</sup> In 2015 the Community’s use of its Colorado River entitlement was abnormally low because of localized rains during the growing season, which resulted in lower irrigation demand and decisions by on-Reservation farmers to forgo planting winter crops.

<sup>4</sup> This amount includes 10,000 acre-feet of system conservation water the Community left in Lake Mead in 2016, but would have otherwise used to create Storage Credits.

<sup>5</sup> This amount includes 80,000 acre-feet of system conservation water that the Community left in Lake Mead in 2017, but would have otherwise used to create Storage Credits.

The sum of the (i) delivery of Community Colorado River water to the Community's Reservation, (ii) the delivery of Community Colorado River water to off-Reservation GSFs/USFs, (iii) the delivery of Community Colorado River water to third-parties pursuant to leases and/or exchanges, (iv) the conservation of Community Colorado River water to create EC ICS pursuant to this Exhibit \_\_ or any other Community ICS exhibit, and (v) the conservation of Community Colorado River water pursuant to a system conservation agreement shall not exceed 311,800 AFY (Entitlement Maximum).

8. Verification:

The amount of mainstream Colorado River water conserved by the Community through extraordinary conservation measures and the EC ICS created will be accounted for in a report and provided to Reclamation (ICS Certification Report). The ICS Certification Report shall include the following information:

- a. End of year letters from its GSF/USF partners to confirm the specific amount of water that the Community would have stored in GSFs/USFs, as well as GSF/USF storage space that was available to the Community but not used by the Community in that year.
- b. Documentation that the amount of water conserved for forgoing storage opportunities does exceed the Community's five-year Average Use of Colorado River water, less:
  - i. Deliveries of Community Colorado River water to located on or off the Reservation in the year EC ICS is created;
  - ii. Deliveries of Community Colorado River water to its Reservation for irrigation in the year EC ICS is created; and
  - iii. Any Community Colorado River water conserved pursuant to a system conservation agreement or other Community ICS exhibit in the year EC ICS is created.
- c. Documentation that the Community's Entitlement Maximum of 311,800 AFY was not exceeded.
- d. Any other information requested by Reclamation.

9. Limitations on Creation of EC ICS:

The amount of water conserved by the Community through extraordinary conservation measures may be used to create EC ICS on an annual basis, subject to limitations set forth in 2007 Guidelines and LBDCP.

10. Certification:

The Community will submit an ICS Certification Report demonstrating the amount of ICS created under this Exhibit \_\_ and that the creation was consistent with an approved ICS plan

of creation, this Exhibit \_\_, and Delivery Agreement No. XX-XX-XX-XXXX . The Community acknowledges that, in accordance with Section 2.5.B of the Forbearance Agreement, the Secretary shall verify information in an ICS Certification Report in consultation with the Lower Division States, and provide a final written decision to the Parties to the Forbearance Agreement.

11. Delivery:

Delivery of ICS created pursuant to this Exhibit \_ shall be consistent with the terms of Delivery Agreement No. XX-XX-XX-XXXX entered into between the Secretary of the Interior and the Community.

12. Counterparts:

This Exhibit \_ to the Forbearance Agreement may be executed in counterparts, each of which shall be an original and all of which, together, shall constitute only one Exhibit \_ to the Forbearance Agreement.

In Witness of this Exhibit \_ to the Forbearance Agreement executed on \_\_, \_\_ 2019, the Parties affix their official signatures below, acknowledging approval of this document on \_\_ day of \_\_, 2019.

[Signatories]