

**AGREEMENT BETWEEN THE UNITED STATES OF AMERICA AND THE GILA RIVER INDIAN COMMUNITY FOR THE CREATION OF INTENTIONALLY CREATED SURPLUS FOR FIRING**

This Agreement ("**Agreement**") is made this 20th day of May 2019, ("**Effective Date**") by and between the UNITED STATES OF AMERICA ("**United States**"), represented by the Secretary of the Interior ("**Secretary**") acting through the Regional Director of the Lower Colorado Region of the Bureau of Reclamation ("**Reclamation**") executing this Agreement, and the GILA RIVER INDIAN COMMUNITY ("**Community**"), a federally recognized Indian tribe organized pursuant to the Indian Reorganization Act of 1934. The Community and Reclamation are sometimes each referred to in this Agreement as a "**Party**" and collectively as the "**Parties.**"

**Recitals**

- A. WHEREAS, Title II of the Arizona Water Settlements Act of 2004 ("**AWSA**"), the Gila River Indian Community Water Rights Settlement Act of 2004 (118 Stat. 3499), authorized settlement of the Community's water rights claims and resulted in the Amended and Restated Gila River Indian Community Water Rights Settlement Agreement, dated December 21, 2005, as amended;
- B. WHEREAS, the Community holds an entitlement to annual delivery of Central Arizona Project ("**CAP**") water under the Amended CAP Water Delivery Contract Between the United States and the Gila River Indian Community, dated May 15, 2006, which superseded and replaced Contract No. 3-07-30-W0284, dated October 22, 1992;
- C. WHEREAS, Section 105(a) of the AWSA requires the Secretary and the State of Arizona to establish a firming program to ensure that 60,648 acre-feet of CAP non-Indian agricultural priority water reallocated to Arizona Indian tribes under Section 104(a)(1) of the AWSA and made available pursuant to the Arizona Water Settlement Agreement among the United States, the Arizona Department of Water Resources, and the Central Arizona Water Conservation District ("**CAWCD**"), effective September 20, 2006, shall, for a 100-year period, be delivered during water shortages in the same manner as water with a CAP municipal and industrial delivery priority is delivered during water shortages;
- D. WHEREAS, the Secretary's total firming obligation as required by the AWSA is up to 36,924 acre-feet annually for a 100-year period beginning December 14, 2007;
- E. WHEREAS, the United States and the CAWCD entered into the Central Arizona Project System Use Agreement, Agreement No. 17-XX-30-W0622, dated February 2, 2017, to, among other things, facilitate the use of the CAP system to firm long-term contracts during a water shortage directly or through exchange;

- F. WHEREAS, the Central Arizona Project System Use Agreement provides for use of the CAP system to deliver water, whether for firming or other purposes;
- G. WHEREAS, on December 13, 2007, the Secretary signed the *Record of Decision, Colorado River Interim Guidelines for Lower Basin Shortages and the Coordinated Operations of Lake Powell and Lake Mead* ("**2007 Interim Guidelines**"), adopting the 2007 Interim Guidelines for a period to be in effect through December 31, 2025, and implementing key elements of Colorado River management including the development of Intentionally Created Surplus ("**ICS**") in Lake Mead from conserved Colorado River System and nonsystem water, and for the delivery of ICS pursuant to applicable Federal law to encourage water conservation actions and increase the flexibility of meeting water demand from Lake Mead, particularly under drought and low reservoir conditions;
- H. WHEREAS, the Community is eligible to create Extraordinary Conservation ICS ("**EC ICS**") through December 31, 2026, and the Community's EC ICS DCP-related Exhibit, defining an EC ICS creation project, has been approved by the Secretary;
- I. WHEREAS, the Colorado River Basin States have developed drought contingency plans in response to the ongoing historic drought and (i) the United States, and Arizona, California and Nevada developed the Lower Basin States Drought Contingency Plan and its Exhibit 1 Lower Basin Drought Contingency Operations, and (ii) the United States, Arizona and CAWCD entered into the Framework Agreement For An Arizona ICS Program (collectively, "**DCP Agreements**") which together, among other things, create new flexibility to incentivize additional voluntary conservation of water to be stored in Lake Mead and contains actions in addition to those authorized or required by the 2007 Interim Guidelines;
- J. WHEREAS, the Colorado River Drought Contingency Plan Authorization Act, Public Law No. 116-14, dated April 16, 2019, directs the Secretary to execute and implement agreements concerning Colorado River drought contingency management and operations, and for other purposes; and
- K. WHEREAS, in exchange for monetary compensation, Reclamation and the Community desire to enter into this Agreement whereby the Community agrees to make its EC ICS available to Reclamation for firming.

NOW, THEREFORE, in consideration of the mutual covenants herein contained, Reclamation and the Community agree as follows:

**Purpose**

This Agreement provides for the Community to make EC ICS available to Reclamation for firming and for the United States to compensate the Community monetarily for such EC ICS.

Agreement

1. Term. This Agreement shall commence on the Effective Date and shall thereafter continue in full force and effect until December 31, 2026; Provided, however, the Community's commitments in Section 7 of this Agreement shall continue until fulfilled.
2. Community Creation of EC ICS. The Community will conserve 100,000 acre-feet in Lake Mead prior to December 31, 2020, pursuant to ICS creation plans approved by Reclamation. A one-time deduction of ten percent (10%) will be assessed of EC ICS pursuant to Section IV. A. 2. of the Lower Basin Drought Contingency Operations Agreement. The EC ICS created herein shall be for the exclusive use of the United States to fulfill its firming obligations and shall be in addition to other volumes of ICS created by the Community.
3. Payment and Quantity of EC ICS for Firming. Subject to the terms and conditions of this Agreement, Reclamation agrees to pay the Community for the creation of 100,000 acre-feet of EC ICS prior to December 31, 2026. The assessment of 10,000 acre-feet of EC ICS due to the one-time ten percent deduction assessed on EC ICS referenced in Section 2 herein, shall be borne by Reclamation. During the term of this Agreement, payments may be made in installments at the discretion of Reclamation in accordance with the pricing schedule set forth in Section 4 of this Agreement.
4. Price. Reclamation may make payments to the Community for all 100,000 acre-feet of EC ICS in 2019, or may pay any portion in subsequent years through 2026. The price of the EC ICS shall begin at \$240.00 per acre-foot in calendar year 2019, and shall be escalated by three (3) percent annually thereafter in accordance with the following schedule:

2019	\$240.00/acre-foot
2020	\$247.20/acre-foot
2021	\$254.40/acre-foot
2022	\$261.60/acre-foot
2023	\$268.80/acre-foot
2024	\$276.00/acre-foot
2025	\$283.20/acre-foot
2026	\$290.40/acre-foot

5. CAP Cost Recovery. Cost Recovery will be achieved pursuant to Section 14 of the Framework Agreement For An Arizona ICS Program. Reclamation shall pay CAWCD for CAP fixed operations, maintenance, and replacement costs on the volume (100,000 acre-feet) of Community CAP water conserved to create EC ICS for firming in Lake Mead in calendar year 2019.
6. Reimbursement For Overpayment. In the event the Community fails to create the amount of EC ICS for firming, as was paid for by Reclamation in accordance with this Agreement, the Community agrees to reimburse Reclamation for the overpayment within 30 days of receipt of a bill for collection from Reclamation. Reimbursement shall be calculated to be

equal to the cost per acre-foot paid for by Reclamation to the Community for EC ICS not created.

7. Timing and Delivery of EC ICS For Firming.

7.1 Timing. Reclamation shall not request, and the Community shall not order, delivery of EC ICS for firming at any time before December 31, 2026.

7.2 Delivery of EC ICS For Firming. After December 31, 2026, upon the request of Reclamation, and at Reclamation's sole discretion, the Community shall cause EC ICS to be delivered to satisfy the Secretary's firming obligation so long as EC ICS paid for by Reclamation remains in the Community's account as reflected in Reclamation's annual *Colorado River Accounting and Water Use Report: Arizona, California, and Nevada*.

8. Renewal and Expiration. Unless otherwise extended or renewed by the Parties to this Agreement, this Agreement and all rights and privileges, duties and obligations, as set forth hereunder shall expire at the close of business on December 31, 2026; Provided, however, the Community's commitments in Section 7 of this Agreement shall continue until fulfilled.

9. Future Agreements. The Parties agree to enter into agreement(s) providing for the delivery of EC ICS for firming and delivery or exchange of other water and/or credits previously acquired by Reclamation for firming. Parties agree to consult within 30 days on an EC ICS delivery agreement as required by 2007 Interim Guidelines and a federal arrangement for delivery of water for firming by the United States through the CAP system.

10. Miscellaneous Provisions.

10.1 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 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 Reclamation: Regional Director  
Lower Colorado Region  
Bureau of Reclamation  
Attention: LC-4400  
P. O. Box 61470  
Boulder City, NV 89006-1470

With a copy to: Area Manager  
Phoenix Area Office  
Bureau of Reclamation  
6150 West Thunderbird Road  
Glendale, AZ 85306

10.2 Non-Waiver. No Party to this Agreement 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.

10.3 Representations and Warranties.

10.3.1 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.

10.3.2 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.

10.3.3 This Agreement constitutes a valid and binding agreement of each Party, enforceable against each Party in accordance with its terms.

10.4 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.

- 10.5 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. This Agreement is and shall be binding upon and shall inure to the benefit of the Parties and, upon dissolution, the legal successors and assigns of their assets and liabilities.
- 10.6 Amendment, Modification, and/or Supplement. This Agreement may be amended, modified, or supplemented only by the written agreement of the Parties. No amendment, modification, or supplement shall be binding unless it is in writing and signed by all Parties.
- 10.7 Judicial Remedies Not Foreclosed. Nothing in this Agreement shall be construed: (i) as in any manner abridging, limiting, or depriving any Party of any means of enforcing any remedy either at law or in equity for the breach of any of the provisions hereof, or of any other remedy which it would otherwise have; or (ii) as depriving any Party of any defense thereto which would otherwise be available. In the event that any dispute arises regarding this Agreement, the Parties agree to meet and attempt to resolve the dispute before seeking remedy.
- 10.8 Availability of Information. Subject to applicable Federal laws and regulations, each Party to this Agreement shall have the right during office hours to examine and make copies of the other Party's books and records relating to matters 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 the Freedom of Information Act or other applicable law. However, use of said reports, data and information shall appropriately reference the source for the respective documents.
- 10.9 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.
- 10.10 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.
- 10.11 Authority of the Secretary. Nothing in this Agreement diminishes or abrogates the authority of the Secretary under applicable Federal law, regulation, or the Consolidated Decree, as it may be further modified.
- 10.12 Contingent on Appropriation 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.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement No. 19-XX-30-W0657 on the day and year first written above.

**GILA RIVER INDIAN COMMUNITY**

**UNITED STATES OF AMERICA**

By: 

Stephen R. Lewis  
Governor

By: 

Terrance J. Pulp, Ph.D.  
Regional Director  
Lower Colorado Region  
Bureau of Reclamation

Approved as to form:

By: 

Linus Everling  
General Counsel