**AGREEMENT BETWEEN THE ARIZONA WATER BANKING AUTHORITY AND THE GILA RIVER INDIAN COMMUNITY FOR THE DEVELOPMENT OF FIRMING CREDITS**

This Agreement (“**Agreement**”) is made this \_\_\_\_ day of May, 2016, and is between the Gila River Indian Community (“**the Community**”), a federally recognized Indian tribe organized pursuant to the Indian Reorganization Act of 1934, and the Arizona Water Banking Authority, an agency of the State of Arizona (“**AWBA**”). Community and AWBA are sometimes each referred to in this Agreement as a “Party” and collectively as the “Parties.”

***Recitals***

A. AWBA, as the agent for the State of Arizona, will satisfy the State of Arizona’s firming obligations to the Community under section 105(b)(2)(A) of the Arizona Water Settlements Act (Pub. L. No. 108-451, 118 Stat. 3478) (“**Act**”) and the Amended and Restated Gila River Indian Community Water Rights Settlement Agreement (“**Settlement Agreement**”).

B. Pursuant to section 205(a) of the Act and paragraph 8.2 of the Settlement Agreement, the Community and the United States executed Exhibit 8.2 to the Settlement Agreement, the Amended Central Arizona Project Water Delivery Contract between the United States and the Gila River Indian Community, on May 15, 2006 (“**Exhibit 8.2 of the Settlement Agreement**”).

C. Exhibit 8.2 of the Settlement Agreement allocates 191,200 acre-feet of CAP Indian Priority Water and 120,600 acre-feet of CAP NIA Priority Water to the Community (“**Community’s CAP Water**”).

D. On June 16, 2015, AWBA and the Community entered into an intergovernmental agreement (“2015 **IGA**”), attached as Exhibit 1, that establishes an annual process to ensure that the obligations of the State of Arizona under section 105(b)(2)(A) of the Act are satisfied.

E. Exhibit B of the 2015 IGA describes several firming methods identified by the Parties that may be utilized to satisfy a firming obligation.

F. Method No. 4 of Exhibit B of the 2015 IGA allows AWBA to accrue firming credits through payment for water delivered to the Community during non-shortage years (“**Firming Credits**”).

G. Under Method No. 4, accrued Firming Credits are registered to a firming account held by the AWBA (“**Firming Account**”) that may be debited in the future, in accordance with the provisions of the IGA, to reduce the State of Arizona’s firming obligation on an acre-foot per acre-foot basis.

H. The Arizona Department of Water Resources issued the Community an underground storage facility (“**USF**”) pilot permit. The Community also anticipates obtaining a full-scale USF permit for the intent of restoring riparian habitat within the Gila River channel and floodplain within the boundaries of the Community‘s Reservation, and earning long-term storage credits as that term is defined in A.R.S. § 45-802.01(11).

I. AWBA desires to fund the delivery of the Community’s CAP Water to the Community’s USF and elsewhere in the Community to accrue Firming Credits to help satisfy its firming obligation.

***Agreement***

NOW, THEREFORE, in consideration of the terms, covenants, conditions and provisions hereinafter set forth and other good and valuable consideration, it is hereby mutually agreed by and between the Community and AWBA as follows:

1. Term. This Agreement shall commence on the date first written above, and shall there-after continue in full force and effect until it either is terminated in accordance with Subsection 3.5 of this Agreement or until it expires as set forth in Section 6.
2. Procedures for Implementing Firming Method.
   1. Subject to the limitations set forth in this Agreement, AWBA agrees to seek funding for the reimbursement of expenses incurred by the Community for the annual delivery of a portion of the Community’s CAP Water delivered within the boundaries of the Community’s Reservation for the purpose of developing Firming Credits.
   2. On or before September 1 of each year of this Agreement, AWBA and the Community shall estimate the amount of funding AWBA will have available and that the Community will accept for reimbursement of the expenses described in Subsection 2.1 (“Annual Funding Amount”) for inclusion in the AWBA’s preliminary Annual Plan of Operation (“APO”) for the following year.
   3. The annual Firming Credits that AWBA can register to the Firming Account shall be calculated by dividing the Annual Funding Amount by the per-acre foot Firm CAP Federal Water Rate (i.e., Fixed OM&R and Pumping Energy Rate) for that year. For example: if the Annual Funding Amount in 2016 is $2,000,000 and the Firm CAP Federal Water Rate for 2016 is $161, AWBA would register 12,422 acre-feet to its Firming Account.
   4. On or before December 31 of each year of the Agreement, AWBA shall confirm under its final APO for the following year the Annual Funding Amount available for reimbursement, as agreed to by the Community, not to exceed the amount estimated under Subsection 2.2 unless mutually agreed upon by the Parties.
3. Billing and Payment:
   1. AWBA agrees to use good faith efforts to procure funding to carry out the intent of this Agreement.
   2. No later than May 1 of each year of this Agreement, the Community shall invoice AWBA for the reimbursement amount identified in the AWBA’s APO for that year.
   3. In the event AWBA is unable to obtain the full or partial Annual Funding Amount for any year of this Agreement, AWBA shall provide written notice informing the Community of the difference in available funds such that the Community can make any necessary billing adjustments prior to invoicing AWBA.
   4. Payment by AWBA to the Community shall be made on or before the thirtieth (30th) day following the invoice date. Bills that are not paid by this date shall be delinquent.
   5. In the event any delinquent amount is not paid by the AWBA within thirty (30) days after receipt by AWBA of written notice from the Community of the delinquency, the Community shall have the right, without liability of any kind:
      1. To refuse that AWBA register Firming Credits to its Firming Account for the delinquent amount so long as the said amount remains unpaidand/or;
      2. To terminate this Agreement.
4. Ordering the Community’s CAP Water. The Community shall order CAP Water in accordance with Exhibit 8.2 of the Settlement Agreement.
5. Not a Lease or Exchange: This Agreement shall not be deemed to be a lease or an exchange of the Community’s CAP Water by AWBA.
6. Renewal, Expiration, or Termination: 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, 2018. However, any Firming Credits registered to the Firming Account under this Agreement shall survive the expiration or termination of this Agreement until all AWBA Firming Credits have been extinguished to satisfy a firming obligation.
7. Dispute Resolution: Disputes arising between the Parties with the respect to this Agreement shall be resolved in accordance with Subsection 9.11 of the 2015 IGA.
8. 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](http://www.gilariver.org/)

[525 West Gu u Ki](http://www.gilariver.org/)

[P.O. Box 97](http://www.gilariver.org/)

[Sacaton, Arizona 85147](http://www.gilariver.org/)

Stephen.Lewis2@gric.nsn.us

With a copy to: Linus Everling, General Counsel

525 West Gu u Ki

P.O. Box 97

Sacaton, Arizona 85147

linus.everling@gric.nsn.us

If to AWBA: Manager

Arizona Water Banking Authority

3550 N. Central Avenue

Phoenix, Arizona 85012

voconnell@azwater.gov

The designation of the address or addressee, including email addresses, may be changed by notice given as provided in this Section 8.

1. Miscellaneous: The miscellaneous provisions in Section 9 of the 2015 IGA shall apply to this Agreement and are incorporated herein by this reference.

IN WITNESS WHEREOF, both the Community and AWBA have executed this Agreement on the date first listed above.

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| **GILA RIVER INDIAN COMMUNITY** | **ARIZONA WATER BANKING AUTHORITY** |
| By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Stephen R. Lewis, Governor | By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Thomas Buschatzke, Chair  Attest:  By:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Kathryn A. Sorensen, Secretary |
| Approved as to form: |
| By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Linus Everling, General Counsel |