

PROJECT PARTNERSHIP AGREEMENT
BETWEEN
THE DEPARTMENT OF THE ARMY
AND
THE GILA RIVER INDIAN COMMUNITY, ARIZONA
FOR
PIMA-MARICOPA IRRIGATION PROJECT RENEWABLE ENERGY PILOT PROJECT

THIS AGREEMENT is entered into this 9 day of Nov, 23, by and between the Department of the Army (hereinafter the "Government"), represented by the District Commander for Los Angeles District (hereinafter the "District Commander") and the Gila River Indian Community, a federally recognized Indian tribe organized under section 16 of the Act of June 18, 1934 (25 U.S.C. 476) with a reservation located in Arizona that is located in Indian country as that term is defined in 18 U.S.C 1151 (hereinafter the "Community"), represented by the Governor.

WITNESSETH, THAT:

WHEREAS, Section 203 of the Water Resources Development Act of 2000, Public Law 110-114, as amended (33 U.S.C. 2269) (hereinafter "Section 203"), authorizes the Secretary to undertake design and construction of water resources development projects that will substantially benefit Indian Tribes and are located primarily within Indian country (as defined 18 U.S.C. 1151);

WHEREAS, pursuant to the authority provided in Section 203, design and construction of the Pima-Maricopa Irrigation Project Renewable Energy Pilot Project (hereinafter the "Project", as defined in Article I.A. of this Agreement) was approved by the Division Commander for the South Pacific Division (hereinafter the "Division Commander") on May 6, 2023;

WHEREAS, Section 103 of the Water Resources Development Act (WRDA) of 1986, as amended (33 U.S.C. 2213), specifies the cost-sharing requirements applicable to the Project;

WHEREAS, total Federal costs associated with planning, design, and construction of a project pursuant to Section 203 may not exceed \$26,000,000; and

WHEREAS, Section 203(d)(1) of the Water Resources Development Act of 2000, as amended (33 U.S.C. 2269(d)(1)) requires that cost share agreements under the Tribal Partnership Program shall be subject to the ability of the non-Federal interest to pay in accordance with procedures established by the Secretary, and the Community has met the applicable criteria for the ability to pay adjustment consisting of the application of a 25 percent factor to the otherwise applicable non-Federal share of its required cash contribution; and

WHEREAS, the Government and the Community have the full authority and capability to perform in accordance with the terms of this Agreement and acknowledge that Section 221 of

the Flood Control Act of 1970, as amended (42 U.S.C. 1962d-5b), provides that this Agreement shall be enforceable in the appropriate district court of the United States.

NOW, THEREFORE, the parties agree as follows:

ARTICLE I - DEFINITIONS

A. The term "Project" means the Pima-Maricopa Irrigation Project Renewable Energy Pilot Project, involving construction of solar panels over the I-10 Level Top Canal to generate energy for irrigation facilities, as generally described in the Pima-Maricopa Irrigation Renewable Energy Project, AZ: I-10 Solar Over Canal Tribal Partnership Project Evaluation Report, dated April 2023 and approved by the Division Commander on May 6, 2023.

B. The term "HTRW" means hazardous, toxic, and radioactive wastes, which includes any material listed as a "hazardous substance" (42 U.S.C. 9601(14)) regulated under the Comprehensive Environmental Response, Compensation, and Liability Act (hereinafter "CERCLA") (42 U.S.C. 9601-9675) and any other regulated material in accordance with applicable laws and regulations.

C. The term "construction costs" means all costs incurred by the Government and Community in accordance with the terms of this Agreement that are directly related to design and construction of the Project and cost shared. The term includes the Government's engineering, design, and construction costs; the Government's supervision and administration costs; the Community's creditable costs for providing design for the Project, real property interests, placement area improvements, and relocations and for providing in-kind contributions, if any; costs for mitigation, including monitoring and adaptive management, if applicable; and the costs of historic preservation activities except for data recovery for historic properties. The term does not include any costs for operation, maintenance, repair, rehabilitation, or replacement; HTRW cleanup and response; dispute resolution; participation by the Government and the Community in the Project Coordination Team to discuss significant issues and actions; audits; or the Community's cost to negotiate this Agreement.

D. The term "real property interests" means lands, easements, and rights-of-way, including those required for relocations and borrow and dredged material placement areas.

E. The term "relocation" means the provision of a functionally equivalent facility to the owner of a utility, cemetery, highway, railroad (excluding existing railroad bridges and approaches thereto), or public facility when such action is required by applicable legal principles of just compensation. Providing a functionally equivalent facility may include the alteration, lowering, raising, or replacement and attendant demolition of the affected facility or part thereof.

F. The term "placement area improvements" means the improvements required on real property interests to enable the ancillary placement of material that has been dredged or excavated during construction, operation, and maintenance of the Project, including, but not limited to, retaining dikes, wasteweirs, bulkheads, embankments, monitoring features, stilling basins, and dewatering pumps and pipes.

G. The term “functional portion thereof” means a portion of the Project that has been completed and that can function independently, as determined in writing by the District Commander, although the remainder of the Project is not yet complete.

H. The term “in-kind contributions” means those materials or services provided by the Community that are identified as being integral to the Project by the Division Commander. To be integral to the Project, the material or service must be part of the work that the Government would otherwise have undertaken for design and construction of the Project. The in-kind contributions also include any initial investigations performed by the Community to identify the existence and extent of any HTRW that may exist in, on, or under real property interests required for the Project; however, it does not include HTRW cleanup and response.

I. The term “fiscal year” means one year beginning on October 1st and ending on September 30th of the following year.

J. The term “Federal Participation Limit” means the \$26,000,000 statutory limitation on the Government’s financial participation in the planning, design, and construction of the Project.

ARTICLE II - OBLIGATIONS OF THE PARTIES

A. In accordance with Federal laws, regulations, and policies, the Government shall undertake design and construction of the Project using funds appropriated by the Congress and funds provided by the Community (including any in-kind contributions funded by the Community). In carrying out its obligations under this Agreement, the Community shall comply with all requirements of applicable Federal laws and implementing regulations, including but not limited to, if applicable, Section 601 of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000d), and Department of Defense Directive 5500.11 issued pursuant thereto; the Age Discrimination Act of 1975 (42 U.S.C. 6102); and the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), and Army Regulation 600-7 issued pursuant thereto.

B. The Community shall contribute 35 percent of construction costs, subject to a reduction of up to \$665,000, in accordance with Section 1156 of WRDA 1986, as amended (33 U.S.C. 2310) (hereinafter the “waiver amount”), and subject to a further reduction after application of the ability to pay adjustment (hereinafter the “adjusted post-waiver amount”), as follows:

1. In accordance with Article III, the Community shall provide the real property interests, placement area improvements, and relocations required for construction, operation, and maintenance of the Project. Nothing in this provision affects the Community’s responsibility under Article IV for the performance and costs of any HTRW cleanup and response related thereto.

2. If providing in-kind contributions as a part of its cost share, the Community shall obtain all applicable licenses and permits necessary for such work. As functional portions

of the work are completed, the Community shall begin operation and maintenance of such work. Upon completion of the work, the Community shall so notify the Government within 30 calendar days and provide the Government with a copy of as-built drawings for the work.

3. After considering the estimated amount of credit that will be afforded to the Community pursuant to paragraphs B.1. above, the Government shall determine the estimated additional amount of funds required from the Community to meet its 35 percent cost share for the then-current fiscal year. The Government shall reduce the funds required from the Community by up to the waiver amount, and apply a 25 percent factor, consisting of the ability to pay adjustment, to obtain the adjusted post-waiver amount; further reduce the adjusted post-waiver amount by the estimated amount of credit for in-kind contributions, if any, that will be afforded in accordance with paragraph B.2. above; and provide the Community a written estimate of the amount of funds required from the Community for the then-current fiscal year. No later than 60 calendar days after receipt of notification from the Government, the Non-Federal Sponsor shall provide the full amount of such required funds to the Government in accordance with Article VI.C.

5. No later than August 1st prior to each subsequent fiscal year, the Government shall provide the Community with a written estimate of the full amount of funds required from the Community during that fiscal year to meet its cost share. No later than September 1st prior to that fiscal year, the Community shall provide the full amount of such required funds to the Government in accordance with Article VI.C.

C. To the extent practicable and in accordance with Federal law, regulations, and policies, the Government shall afford the Community the opportunity to review and comment on contract solicitations, including relevant plans and specifications, prior to the Government's issuance of such solicitations; proposed contract modifications, including change orders; and contract claims prior to resolution thereof. Ultimately, the contents of solicitations, award of contracts, execution of contract modifications, and resolution of contract claims shall be exclusively within the control of the Government.

D. The Government, as it determines necessary, shall undertake actions associated with historic preservation, including the identification and treatment of historic properties as those properties are defined in the National Historic Preservation Act of 1966, as amended (54 U.S.C. 300101-307108). All costs incurred by the Government for such work (including the mitigation of adverse effects other than data recovery) shall be included in construction costs and shared in accordance with the provisions of this Agreement. If historic properties are discovered during construction and the effect(s) of construction are determined to be adverse, strategies shall be developed to avoid, minimize, or mitigate these adverse effects. In accordance with 54 U.S.C. 312507, up to 1 percent of the total amount authorized to be appropriated for the Project may be applied toward data recovery of historic properties and such costs shall be borne entirely by the Government. In the event that costs associated with data recovery of historic properties exceed 1 percent of the total amount authorized to be appropriated for the Project, in accordance with 54 U.S.C. 312508, the Government will seek a waiver from the 1 percent limitation under 54 U.S.C. 312507 and upon receiving the waiver, will proceed with data recovery at full Federal expense.

Nothing in this Agreement shall limit or otherwise prevent the Community from voluntarily contributing costs associated with data recovery that exceed 1 percent.

E. When the District Commander determines that construction of the Project, or a functional portion thereof, is complete, the District Commander shall so notify the Community in writing within 30 calendar days of such determination, and the Community, at no cost to the Government, shall operate, maintain, repair, rehabilitate, and replace the Project, or such functional portion thereof. Such activities will generally consist of periodic inspection and visual examination of project features, repair and replacement of any solar panel and appurtenant support structures, and general vegetation and debris management to ensure project remains functional.

1. The Community shall conduct its operation, maintenance, repair, rehabilitation, and replacement responsibilities in a manner consistent with the authorized purpose of the Project.

2. The Government may request periodic reports from the Community concerning the performance of the Project. The Government and the Community recognize that the Project is of an experimental nature, and may not meet expectations of the design documents despite full compliance by the Community.

F. The Government makes no representations with respect to the quality or availability of water, and assumes no responsibility therefor, or for the treatment of the water.

G. The Community shall prevent obstructions or encroachments on the Project that might reduce the effectiveness of the Project, hinder operation and maintenance of the Project, or interfere with the Project's proper function

H. The Community shall not use Federal program funds to meet any of its obligations under this Agreement unless the Federal agency providing the funds verifies in writing that the funds are authorized to be used for the Project. Federal program funds are those funds provided by a Federal agency, plus any non-Federal contribution required as a matching share therefor.

I. In addition to the ongoing, regular discussions between the parties regarding Project delivery, the Government and the Community may establish a Project Coordination Team to discuss significant issues or actions. The Government's costs for participation on the Project Coordination Team shall not be included in construction costs that are cost shared but shall be included in calculating the Maximum Cost Limit. The Community's costs for participation on the Project Coordination Team shall not be included in construction costs that are cost shared and shall be paid solely by the Community without reimbursement or credit by the Government.

J. Notwithstanding any other provision of this Agreement, the Community shall be responsible for all costs in excess of the Federal Participation Limit.

K. If, after completing the design portion of the Project, the parties mutually agree in writing not to proceed with construction of the Project, the parties shall conclude their activities relating to the Project and proceed to a final accounting in accordance with Article VI.E.

ARTICLE III - REAL PROPERTY INTERESTS, PLACEMENT AREA IMPROVEMENTS, AND RELOCATIONS

A. The Government, after consultation with the Community, shall determine the real property interests required for construction, operation, and maintenance of the Project. The Government shall provide the Community with general written descriptions, including maps as appropriate, of the real property interests that the Government determines the Community must provide for construction, operation, and maintenance of the Project. Subject to the requirements in Article IV.B., the Community shall provide the Government with authorization for entry according to the Government's construction schedule for the Project. The Community shall ensure that real property interests provided for the Project are retained in public ownership for uses compatible with the authorized purposes of the Project.

B. The Government, after consultation with the Community, shall determine the placement area improvements required for construction, operation, and maintenance of the Project, provide the Community with general written descriptions, including maps as appropriate, of such improvements, and provide the Community with a written notice to proceed with such improvements. The Community shall construct the improvements in accordance with the Government's construction schedule for the Project.

C. The Government, after consultation with the Community, shall determine the relocations required for construction, operation, and maintenance of the Project, provide the Community with general written descriptions, including maps as appropriate, of such relocations, and provide the Community with a written notice to proceed with such relocations. The Community shall perform or ensure the performance of these relocations in accordance with the Government's construction schedule for the Project.

D. To the maximum extent practicable, no later than 30 calendar days after the Government provides the Community with written descriptions and maps of the real property interests, placement area improvements, and relocations required for construction, operation, and maintenance of the Project, the Community may request in writing that the Government construct placement area improvements or perform the necessary relocations. If the Government agrees to such a request, the Community, in accordance with Article VI.F., must provide funds sufficient to cover the costs of the placement area improvements or relocations in advance of the Government performing the work. The Government shall construct the placement area improvements and perform the relocations, applying Federal laws, policies, and procedures. The Government's provision of placement area improvements or performing relocations on the Community's behalf does not alter the Community's responsibility under Article IV for the performance and costs of any HTRW cleanup and response related thereto.

ARTICLE IV - HTRW

A. The Community shall be responsible for undertaking any investigations to identify the existence and extent of any HTRW regulated under applicable law that may exist in, on, or under real property interests required for construction, operation, and maintenance of the Project.

B. In the event it is discovered that HTRW exists in, on, or under any of the real property interests needed for construction, operation, and maintenance of the Project, the Community and the Government shall provide written notice to each other within 15 calendar days of such discovery, in addition to providing any other notice required by applicable law. No further Project activities within the contaminated area shall proceed until the parties agree on an appropriate course of action.

C. If HTRW is found to exist in, on, or under any required real property interests, the parties shall consider any liability that might arise under applicable law and determine whether to initiate construction, or if already initiated, whether to continue, suspend, or terminate construction.

1. Should the parties initiate or continue construction, the Community shall be solely responsible, as between the Government and the Community, for the performance and costs of HTRW cleanup and response, including the costs of any studies and investigations necessary to determine an appropriate response to the contamination. The Community shall pay such costs without reimbursement or credit by the Government. In no event will the Government proceed with that construction before the Community has completed the required cleanup and response actions.

2. In the event the parties cannot reach agreement on how to proceed or the Community fails to discharge its responsibilities under this Article upon direction by the Government, the Government may suspend or terminate construction. Additionally, the Government may undertake any actions it determines necessary to avoid a release of such HTRW with the Community responsible for such costs without credit or reimbursement by the Government.

D. In the event of a HTRW discovery, the Community and the Government shall initiate consultation with each other within 15 calendar days in an effort to ensure that responsible parties bear any necessary cleanup and response costs as required by applicable law. Any decision made pursuant to this Article shall not relieve any third party from any HTRW liability that may arise under applicable law.

E. To the maximum extent practicable, the Government and Community shall perform their responsibilities under this Agreement in a manner that will not cause HTRW liability to arise under applicable law.

F. As between the Government and the Community, the Community shall be considered the owner and operator of the Project for purposes of CERCLA liability or other applicable law.

ARTICLE V - CREDIT FOR REAL PROPERTY INTERESTS, PLACEMENT AREA
IMPROVEMENTS, RELOCATIONS, AND IN-KIND CONTRIBUTIONS

A. The Government shall include in construction costs, and credit towards the Community's share of such costs, the value of Community provided real property interests, placement area improvements, and relocations, and the costs of in-kind contributions determined by the Government to be required for the Project.

B. To the maximum extent practicable, no later than 3 months after it provides the Government with authorization for entry onto a real property interest or pays compensation to the owner, whichever occurs later, the Community shall provide the Government with documents sufficient to determine the amount of credit to be provided for the real property interests in accordance with paragraph C.1. of this Article. To the maximum extent practicable, no less frequently than on a quarterly basis, the Community shall provide the Government with documentation sufficient for the Government to determine the amount of credit to be provided for other creditable items in accordance with paragraph C. of this Article.

C. The Government shall verify and credit the Community's eligible construction costs in accordance with the following procedures, requirements, and conditions to determine reasonableness, allocability, and allowability. Such costs shall be subject to audit in accordance with Article X.B.

1. Real Property Interests.

a. General Procedure. For each real property interest, the Community shall obtain an appraisal of the fair market value of such interest that is prepared by a qualified appraiser who is acceptable to the parties. Subject to valid jurisdictional exceptions, the appraisal shall conform to the Uniform Standards of Professional Appraisal Practice. The appraisal must be prepared in accordance with the applicable rules of just compensation, as specified by the Government.

(1) Date of Valuation. For any real property interests owned by the Community on the effective date of this Agreement and required for construction performed after the effective date of this Agreement, the date the Community provides the Government with authorization for entry thereto shall be used to determine the fair market value.

(2) The Community shall submit an appraisal for each real property interest to the Government for review and approval no later than, to the maximum extent practicable, 60 calendar days after the Community provides the Government with an authorization for entry for such interest. If, after coordination and consultation with the Government, the Community is unable to provide an appraisal that is acceptable to the Government, the Government shall obtain an appraisal to determine the fair market value of the real property interest for crediting purposes.

(3) The Government shall credit the Community the appraised amount approved by the Government. Where the amount paid or proposed to be paid by the Community exceeds the approved appraised amount, the Government, at the Community's request, shall consider all factors relevant to determining fair market value and, in its sole discretion, after consultation with the Community, may approve in writing an amount greater than the appraised amount for crediting purposes.

2. Placement Area Improvements. The Government shall include in construction costs and credit towards the Community's share of such costs, the value of placement area improvements required for the Project. Only placement area improvements constructed after the effective date of this Agreement are eligible for credit. The value shall be equivalent to the costs, documented to the satisfaction of the Government, that the Community incurred to provide any placement area improvements required for the Project. Such costs include actual costs of constructing the improvements; planning, engineering, and design costs; and supervision and administration costs.

3. Relocations. The Government shall include in construction costs and credit towards the Community's share of such costs, the value of any relocations performed by the Community that are directly related to construction, operation, and maintenance of the Project. Only relocations performed after the effective date of this Agreement are eligible for credit.

a. For a relocation other than a highway, the value shall be only that portion of relocation costs that the Government determines is necessary to provide a functionally equivalent facility, reduced by depreciation, as applicable, and the salvage value of any removed items.

b. For a relocation of a highway, which is any highway, roadway, or street, including any bridge thereof, that is owned by a public entity, the value shall be only that portion of relocation costs that would be necessary to accomplish the relocation in accordance with the design standard that would apply under similar conditions of geography and traffic load, reduced by the salvage value of any removed items.

c. Relocation costs, as determined by the Government, include actual costs of performing the relocation; planning, engineering, and design costs; and supervision and administration costs. Relocation costs do not include any additional cost of using new material when suitable used material is available.

4. In-Kind Contributions. The Government shall include in construction costs and credit towards the Community's share of such costs, the value of in-kind contributions that are integral to the Project.

a. The value shall be equivalent to the costs, documented to the satisfaction of the Government, that the Community incurred to provide the in-kind contributions, which may include engineering and design; construction; and supervision and administration, as determined by the Government. Appropriate documentation includes invoices and certification of specific payments to contractors, suppliers, and the Community's employees.

b. No credit shall be afforded for the following: interest charges, or any adjustment to reflect changes in price levels between the time the in-kind contributions are completed and credit is afforded; the value of in-kind contributions obtained at no cost to the Community; or costs that exceed the Government's estimate of the cost for such in-kind contributions.

5. Compliance with Federal Labor Laws. Any credit afforded under the terms of this Agreement is subject to satisfactory compliance with applicable Federal labor laws covering non-Federal construction, including, but not limited to, 40 U.S.C. 3141-3148 and 40 U.S.C. 3701-3708 (labor standards originally enacted as the Davis-Bacon Act, the Contract Work Hours and Safety Standards Act, and the Copeland Anti-Kickback Act), and credit may be withheld, in whole or in part, as a result of the Community's failure to comply with its obligations under these laws.

D. Notwithstanding any other provision of this Agreement, the Community shall not be entitled to credit or reimbursement for real property interests that were previously provided as an item of local cooperation for another Federal project.

ARTICLE VI - PROVISION OF NON-FEDERAL COST SHARE

A. As of the effective date of this Agreement, construction costs are projected to be \$6,744,000, with the Government's share of such costs projected to be \$6,320,150, and the Community's share of such costs, projected to be \$423,850, which includes creditable real property interests, relocations, and placement area improvements projected to be \$0, creditable in-kind contributions projected to be and the additional amount of funds required to meet the minimum 35 percent cost share projected to be \$423,850. Average annual costs for operation, maintenance, repair, replacement, and rehabilitation of the Project are projected to be \$41,000. These amounts are estimates only that are subject to adjustment by the Government and are not to be construed as the total financial responsibilities of the Government and the Community.

B. The Government shall provide the Community with monthly reports setting forth the estimated construction costs and the Government's and Community's estimated shares of such costs; costs incurred by the Government, using both Federal and Community funds, to date; the amount of funds provided by the Community to date; the estimated amount of any creditable real property interests, placement area improvements, and relocations; the estimated amount of any creditable in-kind contributions; and the estimated amount of funds required from the Community during the upcoming fiscal year.

C. The Community shall provide the funds required to meet its share of construction costs by delivering a check payable to "FAO, USAED, Los Angeles District (L1)" to the District Commander, or verifying to the satisfaction of the Government that the Community has deposited such required funds in an escrow or other account acceptable to the Government, with interest accruing to the Community, or by providing an Electronic Funds Transfer of such required funds in accordance with procedures established by the Government.

D. The Government shall draw from the funds provided by the Community to cover the non-Federal share of construction costs as those costs are incurred. If the Government determines at any time that additional funds are needed from the Community to cover the Community's required share of such construction costs, the Government shall provide the Community with written notice of the amount of additional funds required. Within 60 calendar days from receipt of such notice, the Community shall provide the Government with the full amount of such additional required funds.

E. Upon completion or termination of construction and resolution of all relevant claims and appeals and eminent domain proceedings, the Government shall conduct a final accounting and furnish the Community with the written results of such final accounting. Should the final accounting determine that additional funds are required from the Community, the Community, within 60 calendar days of receipt of written notice from the Government, shall provide the Government with the full amount of such additional required funds by delivering a check payable to "FAO, USAED, "FAO, USAED, Los Angeles District (L1)" to the District Commander, or by providing an Electronic Funds Transfer of such funds in accordance with procedures established by the Government. Such final accounting does not limit the Community's responsibility to pay its share of construction costs, including contract claims or any other liability that may become known after the final accounting. If the final accounting determines that funds provided by the Community exceed the amount of funds required to meet its share of construction costs, the Government shall refund such excess amount, subject to the availability of funds for the refund.

F. If the Government agrees to perform, as applicable, placement area improvements or relocations on the Community's behalf, the Government shall provide written notice to the Community of the amount of funds required to cover such costs. No later than 60 calendar days of receipt of such written notice, the Community shall make the full amount of such required funds available to the Government through either payment method specified in Article VI.E. If at any time the Government determines that additional funds are required to cover such costs, the Community shall provide those funds within 30 calendar days from receipt of written notice from the Government. If the Government determines that funds provided by the Community exceed the amount that was required for the Government to complete such work, the Government shall refund any remaining unobligated amount.

ARTICLE VII - TERMINATION OR SUSPENSION

A. If at any time the Community fails to fulfill its obligations under this Agreement, the Government may suspend or terminate construction of the Project unless the Assistant Secretary of the Army (Civil Works) determines that continuation of such work is in the interest of the United States or is necessary in order to satisfy agreements with other non-Federal interests.

B. If the Government determines at any time that the Federal funds made available for construction of the Project are not sufficient to complete such work, the Government shall so notify the Community in writing within 30 calendar days, and upon exhaustion of such funds, the

Government shall suspend construction until there are sufficient funds appropriated by the Congress and funds provided by the Community to allow construction to resume.

C. If HTRW is found to exist in, on, or under any required real property interests, the parties shall follow the procedures set forth in Article IV.

D. In the event of termination, the parties shall conclude their activities relating to design and construction of the Project. To provide for this eventuality, the Government may reserve a percentage of available funds as a contingency to pay the costs of termination, including any costs of resolution of contract claims, and resolution of contract modifications.

E. Any suspension or termination shall not relieve the parties of liability for any obligation incurred. Any delinquent payment owed by the Community pursuant to this Agreement shall be charged interest at a rate, to be determined by the Secretary of the Treasury, equal to 150 per centum of the average bond equivalent rate of the 13 week Treasury bills auctioned immediately prior to the date on which such payment became delinquent, or auctioned immediately prior to the beginning of each additional 3 month period if the period of delinquency exceeds 3 months.

ARTICLE VIII - HOLD AND SAVE

The Community shall hold and save the Government free from all damages arising from design, construction, operation, maintenance, repair, rehabilitation, and replacement of the Project, except for damages due to the fault or negligence of the Government or its contractors.

ARTICLE IX - DISPUTE RESOLUTION

As a condition precedent to a party bringing any suit for breach of this Agreement, that party must first notify the other party in writing of the nature of the purported breach and seek in good faith to resolve the dispute through negotiation. If the parties cannot resolve the dispute through negotiation, they may agree to a mutually acceptable method of non-binding alternative dispute resolution with a qualified third party acceptable to the parties. Each party shall pay an equal share of any costs for the services provided by such a third party as such costs are incurred. The existence of a dispute shall not excuse the parties from performance pursuant to this Agreement.

ARTICLE X - MAINTENANCE OF RECORDS AND AUDITS

A. The parties shall develop procedures for the maintenance by the Community of books, records, documents, or other evidence pertaining to costs and expenses for a minimum of three years after the final accounting. The Community shall assure that such materials are reasonably available for examination, audit, or reproduction by the Government.

B. The Government may conduct, or arrange for the conduct of, audits of the Project. Government audits shall be conducted in accordance with applicable Government cost principles

and regulations. The Government's costs of audits shall not be included in construction costs, but shall be included in calculating the Federal Participation Limit.

C. To the extent permitted under applicable Federal laws and regulations, the Government shall allow the Community to inspect books, records, documents, or other evidence pertaining to costs and expenses maintained by the Government, or at the Community's request, provide to the Community or independent auditors any such information necessary to enable an audit of the Community's activities under this Agreement. The Community shall pay the costs of non-Federal audits without reimbursement or credit by the Government.

ARTICLE XI - RELATIONSHIP OF PARTIES

In the exercise of their respective rights and obligations under this Agreement, the Government and the Community each act in an independent capacity, and neither is to be considered the officer, agent, or employee of the other. Neither party shall provide, without the consent of the other party, any contractor with a release that waives or purports to waive any rights a party may have to seek relief or redress against that contractor.

ARTICLE XII - NOTICES

A. Any notice, request, demand, or other communication required or permitted to be given under this Agreement shall be deemed to have been duly given if in writing and delivered personally or mailed by registered or certified mail, with return receipt, as follows:

If to the Community:

Governor
Gila River Indian Community
Office of General Counsel
Post Office Box 97
Sacaton, Arizona 85147

If to the Government:

District Commander
U.S. Army Corps of Engineers, Los Angeles District
915 Wilshire Boulevard
Los Angeles, CA 90017

B. A party may change the recipient or address to which such communications are to be directed by giving written notice to the other party in the manner provided in this Article.

ARTICLE XIII - CONFIDENTIALITY

To the extent permitted by the laws governing each party, the parties agree to maintain the confidentiality of exchanged information when requested to do so by the providing party.

ARTICLE XIV - THIRD PARTY RIGHTS, BENEFITS, OR LIABILITIES

Nothing in this Agreement is intended, nor may be construed, to create any rights, confer any benefits, or relieve any liability, of any kind whatsoever in any third person not a party to this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, which shall become effective upon the date it is signed by the District Commander.

DEPARTMENT OF THE ARMY

GILA RIVER INDIAN COMMUNITY

BY


Andrew J. Baker
Colonel, U.S. Army
District Commander

BY


Stephen R. Lewis
Governor

DATE:

7/11/23

DATE:

11-9-2022