

## CITY OF GLENDALE CAP COMPENSATED CONSERVATION AGREEMENT

AGREEMENT AMONG THE STATE OF ARIZONA, ACTING THROUGH THE ARIZONA DEPARTMENT OF WATER RESOURCES, THE UNITED STATES, ACTING THROUGH THE DEPARTMENT OF THE INTERIOR, BUREAU OF RECLAMATION, CENTRAL ARIZONA WATER CONSERVATION DISTRICT AND CITY OF GLENDALE FOR THE CONSERVATION OF CENTRAL ARIZONA PROJECT WATER

1. **PREAMBLE.** THIS AGREEMENT (“Agreement”) is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2022 by and between the State of Arizona, acting through the Arizona Department of Water Resources (“ADWR”), the United States, acting through the Department of the Interior, Bureau of Reclamation (“United States”), the Central Arizona Water Conservation District (“CAWCD”) and City of Glendale (“Glendale”), each referred to individually as a “Party” and collectively as the “Parties.”

2. **EXPLANATORY RECITALS.**

2.1 WHEREAS, in 2007, the United States Secretary of the Department of the Interior (“Secretary”), adopted a Record of Decision: the Colorado River Interim Guidelines for Lower Basin Shortages and Coordinated Operations for Lake Powell and Lake Mead (“2007 Guidelines”), to among other things, provide incentives and tools for the storage of water in Lake Mead and for Lake Mead elevation-dependent shortages;

2.2 WHEREAS, in 2019 the Lower Division States entered into a Lower Basin Drought Contingency Plan Agreement that further incentivized conservation and storage in Lake Mead and established elevation-dependent contributions to Lake Mead’s sustainability, including required contributions by each Lower Basin State. Federal legislation, the Colorado River Drought Contingency Plan Act, Pub. L. No. 116-14 (2019) directed the Secretary to implement a number of agreements, including specifically an agreement applicable in the Lower Basin that implemented a Lower Basin Drought Contingency Operations rule set known as the “LBOps;”

2.3 WHEREAS, the LBOps provide that “If any 24-month Study for the minimum probable inflows projects that Lake Mead elevations will be at or below 1,030 feet anytime within the succeeding two Years, the Secretary and Lower Division States shall consult and determine what additional measures will be taken by the Secretary and Lower Division States to avoid and protect against the potential for Lake Mead to decline below 1,020 feet,” and the Bureau of Reclamation’s August 2021 24-month study using the minimum probable inflow projected Lake Mead would fall below elevation 1,030 feet in July of 2023;

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2.4 WHEREAS, Pursuant to the requirements of the LBOs, the Secretary and representatives of the Lower Division States met and concluded that at least 500,000 acre-feet per year of additional reductions in water use or augmentation of system water would be required starting in 2022 to protect against the potential of Lake Mead declining to levels below elevation 1,020 feet;

2.5 WHEREAS, on December 15, 2021, the United States, ADWR, CAWCD, The Metropolitan Water District of Southern California (“MWD”), Southern Nevada Water Authority (“SNWA”), and the Colorado River Commission of Nevada (“CRCN”) entered into a Memorandum of Understanding to facilitate near-term actions necessary to maintain the elevation of water in Lake Mead, including commitments to fund conservation activities designed to conserve 500,000 acre-feet or more of water in Lake Mead, commonly referred to as the 500 + Plan; and

2.6 WHEREAS, the Parties desire to take proactive measures consistent with the 500 + Plan to protect against the potential of Lake Mead dropping to elevation 1,020 feet. Glendale is willing to conserve 350 acre-feet of CAP water in calendar year 2022 for this purpose, in exchange for compensation, as provided for in this Agreement.

NOW THEREFORE, in consideration of the terms and conditions set forth herein, and other valuable consideration the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

### 3. **TERM.**

3.1 This Agreement shall be effective upon execution by all Parties and shall terminate on December 31, 2022.

3.2 The Parties may agree to renew this Agreement for calendar year 2023 by entering into a new agreement in writing.

### 4. **COMPENSATED CONSERVATION AGREEMENT.**

4.1 Within 30 days of execution of this Agreement, Glendale shall submit to CAWCD an amended CAP water order reducing its existing water order for calendar year 2022 by 350 acre-feet (“Conserved Water Amount”).

4.2 The Parties agree that the water conserved under this Agreement will reduce releases of water from Lake Mead to benefit Lake Mead water elevations.

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4.3 Within 60 days of receipt of Glendale's amended water order, CAWCD will pay Glendale \$261.60 per acre-foot of conserved water for a total of \$91,560.

4.4 To the extent historic use applies in determining the volume of CAP water available to Glendale in any future year, the Parties agree that the Conserved Water Amount shall be accounted for by CAWCD and Reclamation as water actually delivered and used pursuant to Glendale's subcontract entitlement.

4.5 CAWCD shall not bill Glendale, and Glendale shall be relieved of its obligation to pay, for CAP fixed OM&R and energy charges for the total Conserved Water Amount identified in Section 4.1 herein.

4.6 In the unanticipated and unforeseen event Glendale takes action that interferes with the objective of foregoing the amount of water that was paid for by the Parties, in accordance with this Agreement, Glendale agrees to reimburse for the overpayment within 30 days of receipt of a bill for collection from CAWCD.

4.7 Reclamation will use its existing water order approval process and other authorities to ensure that the Conserved Water under this Agreement is not ordered or used by other Colorado River water entitlement holders during calendar year 2022.

4.8 The Parties agree that the water left in Lake Mead pursuant to this Agreement shall accrue to the benefit of the Colorado River System and shall not accrue to the individual benefit of the Parties or any third party.

### 5. **GENERAL TERMS.**

5.1 Amendment, Modifications, and/or Supplement. This Agreement may be amended, modified, or supplemented only by the written, signed agreement of all Parties.

5.2 Notices. Any notice, demand, or request authorized or required by this Agreement shall be in writing and shall be deemed to be duly given if emailed, delivered, or mailed first class the following addresses:

If to ADWR:

Arizona Department of Water Resources  
Attn: Director  
P.O. Box 36020  
Phoenix, AZ 85067  
Email: tbuschatzke@azwater.gov

With copy to:

Ayesha Vohra  
Deputy Chief Counsel  
P.O. Box 36020  
Phoenix, AZ 85067  
Email: avohra@azwater.gov

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If to CAWCD:

Central Arizona Water Conservation District  
Attn: General Manager  
P.O. Box 43020  
Phoenix, AZ 85080-3020

With copy to:

Jay Johnson  
General Counsel  
Central Arizona Water Conservation District  
Attn: General Manager  
P.O. Box 43020  
Phoenix, AZ 85080-3020  
Email: [jjohnson@cap-az.com](mailto:jjohnson@cap-az.com)

If to Reclamation:

Bureau of Reclamation  
Interior Region 8: Lower Colorado Basin  
Attn: Regional Director  
P.O. Box 61470  
Boulder City, NV 89006-1470  
Email: [slwade@usbr.gov](mailto:slwade@usbr.gov)

With a copy to:

Bureau of Reclamation  
Phoenix Area Office  
Attn: Area Manager  
6150 West Thunderbird Road  
Glendale, AZ 85306  
Email: [lmeyers@usbr.gov](mailto:lmeyers@usbr.gov)

If to Glendale:

City of Glendale  
Attn: City Manager  
5850 W. Glendale Ave  
Glendale, AZ 85301

With a copy to:

City of Glendale  
Attn: City Attorney  
5850 W. Glendale Ave  
Glendale, AZ 85301

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The Parties agree that for purposes of complying with this Section that electronic mail is acceptable. A Party may update its contact information in this Section without need to amend this Agreement by providing Notice to the Parties consistent with this Section.

5.3 Counterparts. This Agreement may be executed in counterparts, each of which will be considered an original and all of which together constitute only one Agreement.

5.4 Binding Effect and Limited Assignment. This Agreement constitutes the entire agreement between the Parties with respect to the subject matter of this Agreement and excludes and supersedes any other oral or written agreements, undertakings or commitments of the Parties relating to the subject matter of this Agreement. The provisions of this Agreement shall apply to and bind the successors and assigns of the Parties. No assignment or transfer of this Agreement or any right or interest therein shall be valid until approved in writing by all Parties.

5.5 Conflict of Interest. The Parties to this Agreement are hereby notified of and acknowledge A.R.S. § 38-511 regarding cancellation for conflict of interest.

5.6 Governing Law and Venue. 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 appropriate Federal Court.

5.7 Availability of Funds. Every payment obligation of ADWR under this Agreement, if any, is conditioned upon the availability of funds appropriated or allocated for payment of such obligation. No liability shall accrue to ADWR or the State of Arizona in the event this provision is exercised, and neither ADWR nor the State of Arizona shall be obligated or liable for any future payments or for any damages as a result of termination under this section.

5.8 Contingent on Appropriations 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.

5.9 Dispute Resolution.

i. The Parties shall meet and confer in good faith to resolve any dispute that may arise under this Agreement.

ii. Should the Parties be unable to resolve such dispute after meeting to try to resolve the dispute, any Party may file an action in any court of competent jurisdiction to seek specific performance of any obligation, provision, or term of condition set forth in this Agreement. The Parties agree to engage in any alternative dispute resolution procedures authorized by their statutes, regulation and court rules, including but not limited to, 5 U.S.C. § 575 and A.R.S. §§ 12-133 and 12-1518.

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iii. Monetary damages, other than through specific performance of any obligation under this Agreement, shall not be available as a remedy for any dispute under this Agreement.

5.10 Recitals. The Explanatory Recitals are incorporated and made a part hereof as if fully set forth herein.

5.11 Severability. If any provision of this Agreement shall be determined to be void by any court of competent jurisdiction, such determination shall not affect any other provision hereof, all of which other provisions shall remain in full force and effect.

5.12 Records Retention. Glendale agrees to retain all data, books, and other records (“records”) relating to this Agreement for a period of five years after the termination of this Agreement. All records shall be subject to inspection and audit by the Parties at reasonable times. Upon request, Glendale shall provide the Parties with any or all such records.

5.13 Equal Opportunity/Non-Discrimination. The Parties agree to comply with all applicable federal or state laws relating to equal opportunity and non-discrimination.

*SIGNATURES BEGIN ON NEXT PAGE*

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**THE UNITED STATES OF AMERICA**

By: \_\_\_\_\_

Jacklynn L. Gould, P.E.

Regional Director

Interior Region 8: Lower Colorado Basin

Bureau of Reclamation

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Approved as to form:

**CENTRAL ARIZONA WATER  
CONSERVATION DISTRICT**

By: \_\_\_\_\_  
Jay M. Johnson  
General Counsel

By: \_\_\_\_\_  
Theodore C. Cooke  
General Manager

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Approved as to form:

**THE STATE OF ARIZONA ACTING THROUGH  
THE DIRECTOR OF THE ARIZONA  
DEPARTMENT OF WATER  
RESOURCES**

By: \_\_\_\_\_  
Nicole D. Klobas  
Deputy Chief Counsel

By: \_\_\_\_\_  
Thomas Buschatzke  
Director

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**CITY OF GLENDALE**

By: \_\_\_\_\_  
Kevin R. Phelps  
City Manager