

**Department of Interior
Bureau of Reclamation**

**Lower Santa Cruz River Basin Study
MEMORANDUM OF AGREEMENT**

The United States Department of Interior, Bureau of Reclamation (Reclamation) agrees to work collaboratively with signatory “Non-Federal Partners” to perform the Lower Santa Cruz River (LSCR) Basin Study as part of the WaterSMART Basin Study Program. The signatory “Non-Federal Partners” are the Southern Arizona Water Users Association (SAWUA), Arizona Department of Water Resources (ADWR), Central Arizona Water Conservation District (CAWCD), Cortaro-Marana Irrigation District (CMID), Pima Association of Governments (PAG), and the Arizona Board of Regents, on behalf of the University of Arizona. This Memorandum of Agreement establishes the terms that will guide the performance of the Study.

RECITALS

The study’s overarching goal is to identify where physical water resources are needed in order to mitigate supply-demand imbalances due to climate change and other factors and develop a strategy to improve water reliability for municipal, industrial, agricultural, cultural and environmental sectors in the Lower Santa Cruz River Basin.

The LSCR Basin Study Area encompasses the Tucson Active Management Area (TAMA) in Arizona, which generally coincides with the lower Santa Cruz River Basin between the Pima County/Santa Cruz County boundary south of the Tucson metropolitan area and Pima County/Pinal County boundary to the north. The Santa Cruz River is a tributary to the Colorado River, a major river system within the Bureau of Reclamation’s service area.

The estimated study cost is \$785,750 which includes a federal contribution of \$392,750 and a minimum non-federal share of \$393,000.

ARTICLES

I. Definitions

- A. *Reclamation* means the United States Department of the Interior, Bureau of Reclamation.
- B. *Non-Federal Partners* means the Southern Arizona Water Users Association, the Arizona Department of Water Resources, the Central Arizona Water Conservation District, the Cortaro-Marana Irrigation District, the Pima Association of Governments and the Arizona Board of Regents, on behalf of the University of Arizona.
- C. *Parties* means Reclamation and Non-Federal Partners.

D. *Agreement* means this Memorandum of Agreement.

E. *Contributed Funds Agreement* means a legal agreement used to receive “all moneys ... from any State, municipality, corporation, association, firm, district, or individual for investigations, surveys, construction work, or any other development work incident thereto involving operations similar to those provided for by the reclamation law, are covered into the reclamation fund and shall be available for expenditure for the purposes for which contributed in like manner as if said sums had been specifically appropriated for said purposes,” 43 USC 395.

F. *Cost-Share* means a specific percentage (%) of identified charges that are allocated to specific entities or Non-Federal Partner(s).

G. *In-kind Services* means services provided by a non-Federal entity that substantially contribute to the completion of the work task or task identified.

H. *Confidential Information* means trade secrets or commercial or financial information that is privileged or confidential under the meaning of 5 USC 552(b)(4).

I. *Intellectual Property* means any invention that is legally protected through patents, copyrights, trademarks, and trade secrets or otherwise protectable under Title 35 of the United States Code, under 7 USC 2321, et seq., or under the patent laws of a foreign country.

J. *Key Personnel* means the following key team members involved in the administration, management, or performance of the study:

Partner(s): Kathleen Chavez
Water Policy Manager
Pima County Regional Wastewater Reclamation Department
201 N. Stone Avenue, 8th floor
Tucson, Arizona 85701
520-724-6588

Reclamation: Eve Halper
Natural Resources Specialist
U.S. Bureau of Reclamation
6150 W. Thunderbird Road
Glendale, Arizona 85603-4001
623-773-6279

K. *Subject Invention* means any invention or other intellectual property conceived or first reduced to practice under this Agreement which is patentable or otherwise protectable under Title 35 of the United States Code, under 7 USC 2321, et seq., or under the patent laws of a foreign country.

L. *Scope of Work* means those activities set forth in Attachment A.

M. *Term of Agreement* means that period set forth under the Section IV, Article A, Term of this Agreement.

II. Authorities and Financial Obligations

- A. Authorities: Nothing in this Agreement alters the statutory authorities or any other authorities of the Non-Federal Partner(s) or Reclamation. This Agreement is intended to facilitate cooperative efforts for mutual provision of services and support, and technical assistance by both parties in the conduct of meeting the objectives and scope of this Agreement. This Agreement does not supersede or void existing agreements between the Non-Federal Partner(s) and Reclamation.

The Southern Arizona Water Users Association (SAWUA) will act as Principal for all Non-Federal partners and their participation. As Principal, SAWUA will collect all “in-kind” contributions in accordance with 2 CFR Part 225, Cost Principles for State, Local, and Indian Tribal Governments and will mitigate any risk of “in-kind” match shortfalls and/or required cash outlays as required by this Agreement.

Reclamation’s authority to enter into this Agreement:

1. Reclamation Act of June 17, 1902 (Ch. 1093, 32 Stat. 388; 43 U.S.C. 372, et seq.) and acts amendatory thereof and supplementary thereto.
2. Title IX of the Omnibus Public Land Management Act of 2009 (P.L. 111-11, 123 Stat. 991).

Southern Arizona Water Users Association’s authority to enter into this Agreement:

1. The Southern Arizona Water Users Association, incorporated in 2002, is a non-profit corporation under the laws of the State of Arizona as provided by section 501 (c)(6) of the Internal Revenue Code of 1986. Its members consist of municipal water and wastewater providers and agricultural water users working cooperatively to preserve and enhance Southern Arizona’s water resources.
2. For the purposes of this project, SAWUA is authorized to execute the Agreement on behalf of its members. In addition, all other Non-Federal Partners are authorized to execute the Agreement as contemplated and provided for below.

Pima Association of Governments’ authority to enter into this Agreement:

1. The Pima Association of Governments is a 501 (C) (4) non-profit corporation. It is the Designated Planning Agency under Section 208 of the federal Clean Water Act and, as such, is responsible for regional wastewater treatment planning throughout Pima County.
2. PAG maintains and updates the Areawide Water Quality Management Plan for the region.

3. PAG has authority to enter into this Agreement based upon the authorization of its governing body, the Regional Council.

Arizona Department of Water Resources' authority to enter into the Agreement:

1. Arizona Department of Water Resources is authorized to execute this Agreement pursuant to A.R.S. §11-952, §45-105(A)(1), (3) and (3), and §45-1709(6), (8) and (9).

Arizona Board of Regents, University of Arizona's authority to enter into this Agreement:

1. Arizona Board of Regents, University of Arizona is authorized to execute this agreement pursuant to A.R.S. §11-952 and §15-1625.

Cortaro-Marana Irrigation District's authority to enter into this Agreement:

1. Cortaro-Marana Irrigation District is a political subdivision created under the Arizona Constitution and statutes, specifically Title 45, Chapter 6, AZ Revised Statutes of 1956. The District has the authority to enter into partnerships and agreements as required to perform governmental and ancillary functions.

Central Arizona Water Conservation District's authority to enter into this Agreement:

1. The Central Arizona Water Conservation District is a multi-county water conservation district and political subdivision of the state of Arizona organized pursuant to A.R.S. §48-3701 *et seq.* for the purposes, among others, of contracting with the United States for the delivery of Central Arizona Project ("CAP") water, the repayment of CAP costs and the operation and maintenance of the CAP.
2. The Central Arizona Water Conservation District has authority to enter into this Agreement pursuant to A.R.S. §48-3712(A)(1), (2) and §48-3713(A)(1) and (B)(4).

- B. Cost Sharing: The costs of the Basin Study will be shared between Reclamation and the Non-Federal Partners, with Reclamation providing \$392,750 and the Non-Federal Partner(s) providing a minimum of \$393,000. Reclamation's financial contribution to the Basin Study shall not exceed 50% of the total cost. The Pima Association of Governments' contributions are strictly limited to "in-kind services" and no cash payout or liability will accrue unless otherwise negotiated. The Cortaro-Marana Irrigation District's contributions are strictly limited to "in-kind services" and no cash payout or liability will accrue unless otherwise negotiated. All or part of the Non-Federal Partners' share may be provided as in-kind services. Valuation of in-kind services shall be in accordance with 2 CFR Part 225, Cost Principles for State, Local, and Indian Tribal Governments (OMB Circular A-87).

The Cost of the Study is expected to be \$785,750 with 50.01% contribution by the Partners and 49.99% contributed by Reclamation.

- C. Financial Obligations: This Agreement is not a funding document and does not authorize the obligation or transfer of funds. If a subsequently identified activity or project is identified that

may require Reclamation to receive or expend funds received from the Non-Federal Partners for investigations, surveys, construction work, or any other development work incident thereto involving operations similar to those provided for by the Reclamation law, a supplemental Contributed Funds Agreement, pursuant to the Sundry Civil Expenses Appropriations Act for 1922 (43 USC 395), will be executed. Funds contributed by Non-Federal Partners will only be used to pay for costs incurred by Reclamation associated with completing the tasks described in this Agreement or modifications to this Agreement agreed upon in writing between the Parties.

- D. Anti-Deficiency Act: All activities, responsibilities, and commitments made under or pursuant to this Agreement (including any Contributed Funds Agreement under this Agreement) are subject to the availability of appropriated funds and each party's budget priorities, as determined by each party, and neither the Non-Federal Partners nor Reclamation are obligated in any way under this Agreement to expend appropriations or to enter into any contract, assistance agreement, Contributed Funds agreement, or other financial obligation. No provision herein shall be interpreted to require obligation or payment of funds in violation of the Anti-Deficiency Act, 31 U.S.C. 1341.

III. Publications, Reports, and Confidentiality

- A. Publications: The Parties understand and agree that this Agreement may be disclosed to the public in accordance with the Freedom of Information Act. Subject to the requirements of confidentiality and preservation of rights in Subject Inventions, either party may publish the results of this Agreement, PROVIDED:
1. The other party is allowed to review the Basin Study Report at least sixty (60) days prior to submission for publication by submission to Reclamation.
 2. The Basin Study Report shall acknowledge this Agreement and the contributions of each party's personnel.
 3. The final decision as to the Basin Study Report content rests with the party that writes the study report.
- B. Reports: The results of this Agreement and science, engineering, and technology data that are collected, compiled, and evaluated under this Agreement shall be shared and mutually interchanged by Non-Federal Partners and Reclamation. A final report summarizing all data shall be submitted to Reclamation and the Non-Federal Partners through the key contacts identified in Sections I.J within the performance period of this Agreement, as defined in Section IV, Article A. The final report will be in the public domain, and will be published on Reclamation's website.
- C. Confidentiality: Any Confidential Information used in this Agreement shall be clearly marked confidential or proprietary by the submitter and shall not be disclosed by the Recipient without permission of the owner. To the extent either party orally submits its Confidential Information to the other party, the submitting party will prepare a document marked "CONFIDENTIAL"

embodying or identifying in reasonable detail such orally submitted Confidential Information and provide the document to the other party within thirty (30) days of disclosure.

Neither party shall be bound by confidentiality if the Confidential Information received from the other party:

1. Already is available to the public or known to the recipient;
2. Becomes available to the public through no fault of the recipient; or
3. Is non-confidentially received from another party legally entitled to it.

It shall not be a breach of this Agreement if the Non-Federal Partners are required to disclose the Confidential Information by a valid order of a court or other government body, or as otherwise required by law, or as necessary to establish the rights of either party under this Agreement; PROVIDED THAT the Non-Federal Partners shall provide prompt prior notice thereof to Reclamation to enable Reclamation to seek a protective order or otherwise prevent such disclosure, and PROVIDED FURTHER THAT the Confidential Information otherwise shall continue to be confidential.

- D. Intellectual Property: Unless otherwise agreed by the parties, custody and administration of inventions made as a consequence of, or in direct relation to, the performance of activities under this Agreement shall remain with the respective inventing party. In the event that an invention is made jointly by employees of the parties or an employee of an party's contractor, the parties shall consult and agree as to future actions toward establishment of patent protection for the invention.

IV. Term and Termination

- A. Term: This Agreement shall take effect upon the approval of the parties and, unless terminated per Section IV, Article C, Termination, will expire three years from the date of the last signature to this Agreement. All Contributed Funds Agreements under this Agreement will be limited to an initial period of performance not to exceed the term of this Agreement, although they may be renewed for additional periods of performance not to exceed the term of this Agreement for any renewal period.
- B. Amendment: If either party desires a modification in this Agreement, the parties shall confer in good faith to determine the desirability of such modification. Such modification shall not be effective until a written amendment is signed, and dated by the undersigned representative(s) of all parties.
- C. Termination: Parties may terminate this Agreement prior to its expiration at any time, with or without cause, and without incurring any liability or obligation to the other parties, by giving the other parties at least ninety (90) calendar days prior written notice of termination.

V. General

- A. Liability: It is understood and agreed that neither party to this Agreement shall be responsible for any damages or injuries arising out of the conduct of activities governed by this Agreement, except to the extent that such damages and/or injuries were caused by the negligent or wrongful acts or omissions of its employees, agents or officers. Reclamation's liability shall be limited by the Federal Tort Claims Act, 28 USC 2671, *et seq.*
- B. Limitations: This Agreement sets out the parties' intentions and objectives and does not direct or apply to any person outside the Non-Federal Partner(s) and Reclamation. This Agreement is not intended to, and does not create, any right, benefit, or trust responsibility, substantive or procedural, enforceable at law or equity, by anyone against the United States, its agencies, its officers, or any person.
- C. Notices and Key Personnel: Notices between the Parties and copies of correspondence among the scientific and/or technical representatives of each party that interpret or may have a bearing on the legal effect of this Agreement's terms and conditions shall be sent to the key personnel listed in Section I.J. Reclamation's key personnel is authorized to perform scientific and/or technical activities falling within the Scope of this Agreement. The key personnel is not authorized to change or interpret with authority the terms and conditions of this Agreement. The roles and responsibilities of the key personnel will be as described in the Plan of Study, Section IV, Article A.
- D. Subcontracting Approval: A party hereto desiring to obtain and use the services of a third party via contract or otherwise shall give prior notice to the other parties, including details of the contract or other arrangement. This requirement is to assure that confidentiality is not breached and rights in Subject Inventions are not compromised.
- E. Assignment: Neither party has the right to assign this Agreement or any of its responsibilities hereunder.
- F. Endorsement: The Non-Federal Partners shall not in any way state or imply that this Agreement or the results of this Agreement are an endorsement by the Department of the Interior, Federal Government, or Reclamation or its organizational units, employees, products, or services except to the extent permission is granted by an authorized representative of Reclamation.
- G. Regulatory Compliance: Both parties acknowledge and agree to comply with all applicable laws and regulations of the state, Federal, and local environmental and cultural and paleontological resource protection laws and regulations as applicable to the activities or projects for this Agreement. These regulatory compliance requirements may include, but are not limited to, the National Environmental Policy Act (NEPA) including the Council on Environmental Quality and Department of the Interior regulations implementing NEPA, the Clean Water Act, the Endangered Species Act, consultation with potentially affected Tribes, and consultation with the State Historic Preservation Office.
- H. Disputes: Any dispute arising under this Agreement, which cannot be readily resolved, shall be submitted jointly to the Key Personnel officials, identified in Section I.J. Each party agrees to seek in good faith to resolve the issue through negotiation or other forms of nonbinding dispute

resolution processes mutually acceptable to the parties. Pending the resolution of any dispute or claim pursuant to Section V, Article H, the parties agree that performance of all obligations shall be pursued diligently.

- I. Force Majeure: Neither party shall be liable for any unforeseeable event beyond its reasonable control not caused by the fault or negligence of such party:
 - 1. Which causes the party to be unable to perform its obligations under this Agreement; and
 - 2. Which it has been unable to overcome by the exercise of due diligence.
 - 3. This includes, but is not limited to, flood, drought, earthquake, storm, fire, pestilence, lightning and other natural catastrophes, epidemic, war, riot, civil disturbance or disobedience, strikes, labor dispute, failure or sabotage of either party's facilities or any order or injunction made by a court or public agency.
- J. Relationship between the Parties: The Parties are and shall remain independent contractors and nothing herein shall be construed to create a partnership, agency, joint venture, or teaming agreement between the parties.
- K. Governing Law: The construction, validity, performance, and effect of this entire Agreement shall be governed by the laws applicable to the Government of the United States of America in accordance with applicable Federal Law as interpreted by Federal Courts. To the extent a question should arise regarding the construction, validity, performance and effect of this Agreement which is not governed by Federal statutory or case law, the statutory and case law of the State of Arizona shall apply.
- L. Waiver: The failure of either party to enforce any term hereof shall not be deemed a waiver of any rights contained herein.
- M. Invalid Provision: The illegality or invalidity of any provision of this Agreement shall not impair, affect, or invalidate the other provisions of this Agreement. In the event any provision of this Agreement is determined to be invalid or unenforceable under any controlling law, the invalidity or unenforceability of that provision shall not in any way affect the validity or enforceability of the remaining provisions of this Agreement.
- N. Entire Agreement: The terms and conditions contained in this Agreement and its appendices or attachments constitute the entire agreement and understanding by and between the parties and shall supersede all other communications, negotiations, arrangements and agreements either oral or written, with respect to the subject matter herein.
- O. Counterparts: This Agreement may be executed in duplicate and each original shall be equally effective.

SCOPE OF WORK

I. Purpose

The study's overarching goal is to identify where physical water resources are needed in order to mitigate supply-demand imbalances due to climate change and other factors and develop a strategy to improve water reliability for municipal, industrial, agricultural, cultural and environmental sectors in the Lower Santa Cruz River (LSCR) Basin.

II. Authority

Nothing in this Agreement alters the statutory authorities or any other authorities of the Non-Federal Partner(s) or Reclamation. This Agreement is intended to facilitate cooperative efforts for mutual provision of services and support, and technical assistance by both parties in the conduct of meeting the objectives and scope of this Agreement. This Agreement does not supersede or void existing agreements between the Non-Federal Partner(s) and Reclamation.

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2. For the purposes of this project, SAWUA is authorized to execute the Agreement on behalf of its members. In addition, all other Non-Federal Partners are authorized to execute the Agreement as contemplated and provided for below.

Pima Association of Governments' authority to enter into this Agreement:

1. The Pima Association of Governments is a 501 (C) (4) non-profit corporation. It is the Designated Planning Agency under Section 208 of the federal Clean Water Act

and, as such, is responsible for regional wastewater treatment planning throughout Pima County.

2. PAG maintains and updates the Areawide Water Quality Management Plan for the region.
3. PAG has authority to enter into this Agreement based upon the authorization of its governing body, the Regional Council.

Arizona Department of Water Resources' authority to enter into the Agreement:

1. Arizona Department of Water Resources is authorized to execute this Agreement pursuant to A.R.S. §11-952, §45-105(A)(1), (3) and (3), and §45-1709(6), (8) and (9).

Arizona Board of Regents, University of Arizona's authority to enter into this Agreement:

1. Arizona Board of Regents, University of Arizona is authorized to execute this agreement pursuant to A.R.S. §11-952 and §15-1625.

Cortaro-Marana Irrigation District's authority to enter into this Agreement:

1. Cortaro-Marana Irrigation District is a political subdivision created under the Arizona Constitution and statutes, specifically Title 45, Chapter 6, AZ Revised Statutes of 1956. The District has the authority to enter into partnerships and agreements as required to perform governmental and ancillary functions.

Central Arizona Water Conservation District's authority to enter into this Agreement:

1. The Central Arizona Water Conservation District is a multi-county water conservation district and political subdivision of the state of Arizona organized pursuant to A.R.S. §48-3701 *et seq.* for the purposes, among others, of contracting with the United States for the delivery of Central Arizona Project ("CAP") water, the repayment of CAP costs and the operation and maintenance of the CAP.
2. The Central Arizona Water Conservation District has authority to enter into this Agreement pursuant to A.R.S. §48-3712(A)(1), (2) and §48-3713(A)(1) and (B)(4).

III. Scope of Study

The Scope of Study will be as described in Attachment A-Plan of Study.

IV. Strategies for Stakeholder Input

Strategies for Stakeholder Input are described in Appendix II (Community and Outreach Plan) of Attachment A - Plan of Study

V. Budget Estimate and Cost-Share

A Budget Estimate for all tasks to be included in the Study, with contributions from the Non-Federal Cost-Share Partners and Reclamation, is included as Section V1.A (Cost Table) in Attachment A-Plan of Study.

VI. Schedule and Phasing

The schedule and phasing for all tasks to be included in the Study is included as Section V1.B (Milestone Schedule) in Attachment A-Plan of Study.

VII. Responsibilities

Reclamation and Non-Federal Share Partners responsibilities are described in the Attachment A - Plan of Study.

For the Non-Federal Partners

Warren Tenney, President
Southern Arizona Water Users Association

Date

For the Non-Federal Partners

Thomas Buschatzke, Director
Arizona Department of Water Resources

Date

For the Non-Federal Partners

Farhad Moghimi, Director
Pima Association of Governments

Date

For the Non-Federal Partners

Marie Pearthree, Deputy General Manager
Strategic Initiatives and Public Policy
Central Arizona Water Conservation District

Date

For the Non-Federal Partners

David Bateman, General Manager
Cortaro-Marana Irrigation District

Date

For the Non-Federal Partners

Arizona Board of Regents, on behalf
of The University of Arizona

Date

For Reclamation

Terrance J. Fulp, Ph.D.
Regional Director, Lower Colorado Region

Date