YAVAPAI-PRESCOTT INDIAN TRIBE

WATER RIGHTS SETTLEMENT AGREEMENT
<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.0</td>
<td>RECITALS</td>
</tr>
<tr>
<td>2.0</td>
<td>DEFINITIONS</td>
</tr>
<tr>
<td>3.0</td>
<td>EXHIBITS</td>
</tr>
<tr>
<td>4.0</td>
<td>WATER ENTITLEMENT</td>
</tr>
<tr>
<td>5.0</td>
<td>WATER SERVICE AGREEMENT</td>
</tr>
<tr>
<td>6.0</td>
<td>GRANITE CREEK WATER</td>
</tr>
<tr>
<td>7.0</td>
<td>REGULATION OF TRIBAL WATER RESOURCES</td>
</tr>
<tr>
<td>8.0</td>
<td>ACQUISITION OF CAP CONTRACTS AND ESTABLISHMENT OF TRUST ACCOUNTS</td>
</tr>
<tr>
<td>9.0</td>
<td>WAIVER OF CLAIMS</td>
</tr>
<tr>
<td>10.0</td>
<td>ENFORCEABILITY DATE AND RELATED MATTERS</td>
</tr>
<tr>
<td>11.0</td>
<td>STATE OF ARIZONA CONTRIBUTION</td>
</tr>
<tr>
<td>12.0</td>
<td>OTHER PROVISIONS</td>
</tr>
<tr>
<td>12.1</td>
<td>Cooperation with Tribal Water Development</td>
</tr>
<tr>
<td>12.2</td>
<td>Execution by Prescott</td>
</tr>
<tr>
<td>12.3</td>
<td>Use Limitation</td>
</tr>
<tr>
<td>12.4</td>
<td>Effect of Non-Use</td>
</tr>
<tr>
<td>12.5</td>
<td>Environmental Compliance</td>
</tr>
<tr>
<td>12.6</td>
<td>Disclaimer</td>
</tr>
<tr>
<td>12.7</td>
<td>Evidentiary Effect of Negotiations</td>
</tr>
<tr>
<td>12.8</td>
<td>Effect of Execution by State of Arizona</td>
</tr>
<tr>
<td>12.9</td>
<td>Rights Held in Trust</td>
</tr>
<tr>
<td>12.10</td>
<td>Succession</td>
</tr>
<tr>
<td>12.11</td>
<td>Destruction of Facilities</td>
</tr>
</tbody>
</table>
12.12 Contingent on Appropriation of Funds
12.13 Officials Not to Benefit
12.14 Additional Documents
12.15 Governing Law
12.16 Headings
12.17 Counterparts
12.18 Notices
12.19 Entire Agreement
12.20 Term

EXHIBITS

2.1 YAVAPAII-PRESCOTT INDIAN TRIBE WATER RIGHTS SETTLEMENT ACT OF 1994

2.15 WATER SERVICE AGREEMENT BETWEEN YAVAPAII-
PRESCOTT INDIAN TRIBE AND CITY OF
PRESCOTT

3.0 INTERGOVERNMENTAL AGREEMENT BETWEEN
THE CITY OF PRESCOTT AND CHINO VALLEY
IRRIGATION DISTRICT.

7.1 MEMORANDUM OF UNDERSTANDING BETWEEN THE
YAVAPAII-PRESCOTT INDIAN TRIBE AND THE
STATE OF ARIZONA

9.1 WAIVER AND RELEASE

9.5 STIPULATION AND FORM OF JUDGMENT
AGREEMENT

THIS AGREEMENT, dated as of June 29, 1995, is entered into
by and between the United States of America, the State of Arizona, the
Yavapai-Prescott Indian Tribe, the City of Prescott and the Chino
Valley Irrigation District.

1.0  RECITALS

1.1  The representatives of the United States of America, the
State of Arizona, the Yavapai-Prescott Indian Tribe, the City of
Prescott and the Chino Valley Irrigation District have agreed to
permanently settle the water rights of the Yavapai-Prescott Indian
Tribe and its members, to finally resolve certain pending litigation
on water rights.

1.2  Section 2(a)(1) of the Yavapai-Prescott Indian Tribe Water
states that it is the policy of the United States, in fulfillment of
its trust responsibility to Indian tribes, to promote Indian self-
determination and economic self-sufficiency, and to settle, wherever
possible, the water rights claims of Indian tribes without lengthy and
costly litigation.

1.3  The objective of this settlement is to resolve certain
outstanding water-related litigation and to settle, once and for
always, the water rights of the Yavapai-Prescott Indian Tribe and its
members based upon Federal, State and other laws by confirming to the
Yavapai-Prescott Indian Tribe sufficient water from various sources
to develop lands within the Yavapai-Prescott Indian Tribe’s
Reservation.
NOW, THEREFORE, in consideration of the premises and of the
promises and agreements hereinafter set forth, the parties hereto
agree as follows:

2.0 DEFINITIONS

This Agreement will employ abbreviated terms which will have
the meanings stated below.

2.1 "Act" means the Yavapai-Prescott Indian Tribe Water Rights
Act is attached as Exhibit 2.1 to this Agreement.

2.2 "CAP" means the Central Arizona Project, a reclamation
project authorized under title III of the Colorado River Basin Project
Act of 1968 (43 U.S.C. 1521 et seq.).

2.3 "CVID" means the Chino Valley Irrigation District, an
irrigation district organized under the laws of the State of Arizona.

2.4 "Divert" means to remove surface water from its natural
course or location by means of a ditch, canal, flume, bypass,
pipeline, conduit, well, pump or other act of man, either (1)
downstream of the gauging station as more particularly identified in
Section 11(d) of the Act; or (2) upstream of the gauging station, so
long as the Tribe provides, at its own expense, other reasonable means
of measuring the rate and quantity of water it diverts. "Diversion"
means the act of diverting.

2.5 "Effluent" means water which, after being diverted as
surface water or withdrawn as groundwater, has been used for domestic,
municipal or industrial purposes and which is available for reuse for
any purpose, whether or not the water has been treated to improve its quality.

2.6 "Fund" means the Verde River Basin Water Fund, a federal fund to be created pursuant to section 6(a) of the Act.

2.7 "Gila River Adjudication" means that action pending in the Superior Court of the State of Arizona in and for the County of Maricopa styled as In Re the General Adjudication of All Rights to Use Water in the Gila River System and Source, W-1 (Salt), W-2 (Verde), W-3 (Upper Gila) and W-4 (San Pedro), including subsequent enforcement proceedings therein.

2.8 "Groundwater" means subsurface water which is not defined as surface water or effluent pursuant to Subparagraphs 2.13 and 2.5 hereof.

2.9 "Parties" means the entities represented by the signatories to this Agreement.

2.10 "Prescott" means the City of Prescott, an Arizona municipal corporation.

2.11 "Prescott Active Management Area" means the Active Management Area, established pursuant to Arizona law and encompassing the little Chino and upper Agua Fria sub-basins, wherein the groundwater management goal is to achieve and thereafter maintain a long-term balance between annual groundwater withdrawals and annual natural and artificial groundwater recharge by the year 2025 or such earlier date as may be determined by the director of the Arizona Department of Water Resources.

2.13 "Secretary" means the Secretary of the United States Department of the Interior or his duly authorized representative.

2.14 "Surface Water" means all water on or beneath the surface of the earth which is appropriable under applicable law.

2.15 "Tribe" means the Yavapai-Prescott Indian Tribe, a tribe of Yavapai Indians duly recognized by the Secretary.

2.16 "Water Service Agreement" means that agreement between the Yavapai-Prescott Indian Tribe and the City of Prescott dated ________, 1995. The Water Service Agreement is attached as Exhibit 2.15 to this Agreement.

2.17 "Withdraw" means to remove groundwater from its natural location by means of a well, pump, pipeline, ditch, conduit or other act of man. "Withdrawal" means the act of withdrawing.

3.0 EXHIBITS

This Agreement includes as exhibits additional and subsidiary documents and agreements in the form of legislation, contracts, stipulations for settlement of litigation, and waivers of claims, which are attached and incorporated herein as follows

A. The Act, a copy of which is attached hereto as Exhibit 2.1 and incorporated herein by this reference.

B. The Water Service Agreement, a copy of which is attached hereto as Exhibit 2.15 and incorporated herein by reference in Subparagraph 5.1.
C. A Memorandum of Understanding between the Yavapai-
Prescott Indian Tribe and the State of Arizona, a copy of which is
attached hereto as Exhibit 7.1 and incorporated herein by this
reference.

D. A Waiver and Release of Claims, a copy of which is
attached hereto as Exhibit 9.1 and incorporated herein by this
reference.

E. A Stipulation and Form of Judgment, a copy of which is
attached hereto as Exhibit 9.5 and incorporated herein by this
reference.

F. An Intergovernmental Agreement between the City of
Prescott and Chino Valley Irrigation District (adopted May 30, 1995),
a copy of which is attached hereto as Exhibit 3.0 and incorporated
herein by this reference.

4.0 WATER ENTITLEMENT

Water for the settlement will be provided to the Tribe from
the sources and in the quantities outlined and defined in this
Paragraph 4.0 and Paragraphs 5.0 and 6.0 hereof.

4.1 In addition to water supplies provided to the Tribe pursuant
to Subparagraphs 4.2, 4.3 and 4.4 hereof, Reservation water users
shall be provided with water service from Prescott pursuant to the
Water Service Agreement, as further described in Paragraph 5.0 hereof
and the Water Service Agreement. The Water Service Agreement provides
for water service to Reservation users as Prescott customers with
priority access to five hundred and fifty (550) acre-feet per annum,
hereinafter "AFA", during times of severe shortage.
4.2 In addition to water supplies provided to the Tribe pursuant to Subparagraphs 4.1, 4.3 and 4.4 hereof, the Tribe shall have the right to beneficially use on the Reservation, and to store and divert on or off the Reservation, up to one thousand (1,000) AFA, of the right to Granite Creek surface water established by CVID pursuant to Arizona law and to be confirmed in the Gila River Adjudication or to permit the diversion, treatment and delivery by Prescott of a portion of this water to facilitate deliveries of absolute priority water by Prescott pursuant to Subparagraph 5.1 of the Water Service Agreement, as further described in paragraph 6.0 hereof. The priority of the Tribe's right to such Granite Creek water shall be the priority for that water as determined by the confirmation of CVID's right to Granite Creek water in the Gila River Adjudication.

4.3 In addition to water supplies provided to the Tribe pursuant to Subparagraphs 4.1, 4.2 and 4.4 hereof, the Tribe shall have the right to withdraw groundwater beneath the Reservation for on-Reservation beneficial use in accordance with any groundwater management plan which may be developed by the Tribe pursuant to Section 11(c) of the Act and Paragraph 7.0 hereof. The parties to this Agreement, except as provided in Section 13(a) and 13(b) of the Act, recognize, ratify, confirm and declare to be valid the Tribe's right and entitlement to the on-Reservation beneficial use of all groundwater beneath the Reservation, in accordance with any groundwater management plan developed by the Tribe pursuant to Section 11(c) of the Act and Paragraph 7.0 hereof, and agree to not object to, dispute or challenge, in the Gila River Adjudication or in any other
judicial or administrative proceeding, this right and entitlement.

4.4 In addition to water supplies provided to the Tribe pursuant
to Subparagraphs 4.1, 4.2 and 4.3 hereof, effluent generated on the
Reservation may either be used on the Reservation or sold to off-
Reservation users, in accordance with the Water Service Agreement.
The parties to this Agreement, except as provided in Sections 13(a)
and 13(b) of the Act, recognize, ratify, confirm and declare to be
valid the Tribe's right and entitlement to use and/or sell to third
parties all effluent generated by Reservation water users, in
accordance with the Water Service Agreement, and agree to not object
to, dispute or challenge, in the Gila River Adjudication or in any
other judicial or administrative proceeding, this right and
entitlement. All use of Effluent off the Reservation shall be in
accordance with applicable state and federal law.

5.0 WATER SERVICE AGREEMENT

5.1 The Water Service Agreement between the Tribe and Prescott,
attached as Exhibit 2.15 hereof, is hereby incorporated into and made
a part hereof.

5.2 The parties to this Agreement, except as provided in
Sections 13(a) and 13(b) of the Act, recognize, ratify, confirm and
declare to be valid Prescott's rights and entitlements to water from
the Verde and Gila River watersheds and agree to not object to,
dispute or challenge, in the Gila River Adjudication or in any other
judicial or administrative proceeding, such rights and entitlements,
which rights and entitlements are evidenced by, described, stated,
claimed, confirmed or established in the following documents and
instruments:


c. Statement of Claimant Form for Other Uses No. 39-05-50068, In Re the General Adjudication of All Rights to Use Water in the Gila River System and Source, Nos. W-1 through W-4 (Maricopa County Super. Ct.).

d. Statement of Claimant Form for Other Uses No. 39-05-55003, In Re the General Adjudication of All Rights to Use Water in the Gila River System and Source, Nos. W-1 through W-4 (Maricopa County Super. Ct.).


g. Water Right Registration Act Statement of Claim of Right to Use Public Waters of the State No. 36-40301.

h. Water Right Registration Act Statement of Claim of Right to Use Public Waters of the State No. 36-40302.

i. Water Right Registration Act Statement of Claim of Right to Use Public Waters of the State No. 36-41650.

j. Water Right Registration Act Statement of Claim of Right to Use Public Waters of the State No. 36-43928.

k. Water Right Registration Act Statement of Claim of
Right to Use Public Waters of the State No. 36-43929.

1. Water Right Registration Act Statement of Claim of Right to Use Public Waters of the State No. 36-43930.

m. Water Right Registration Act Statement of Claim of Right to Use Public Waters of the State No. 36-43931.

n. Water Right Registration Act Statement of Claim of Right to Use Public Waters of the State No. 36-43932.

o. Water Right Registration Act Statement of Claim of Right to Use Public Waters of the State No. 36-43933.

p. Water Right Registration Act Statement of Claim of Right to Use Public Waters of the State No. 36-60238.

q. Right to Withdraw Groundwater, Service Area Right No. 56-003017.0000.

r. Certificate of Type 2 Non-Irrigation Grandfathered Right No. 58-117267.

5.3 The parties to this Agreement, except as provided in Sections 13(a) and 13(b) of the Act, recognize, ratify, confirm and declare to be valid the Tribe's rights and entitlements under the Water Service Agreement and agree to not object to, dispute or challenge, in the Gila River Adjudication or in any other judicial or administrative proceeding, such rights and entitlements.

5.4 The parties to this Agreement, except as provided in Sections 13(a) and 13(b) of the Act, further recognize, ratify, confirm and declare to be valid the Tribe's conditional right and entitlement, under the Water Service Agreement, to elect to assume Reservation water service in the circumstances listed in Subparagraph
8.5 of the Water Service Agreement and agree, in the event of such an assumption, to not object to, dispute or challenge, in the Gila River Adjudication or in any other judicial or administrative proceeding, the Tribe's right and entitlement to utilize the specified Type 2 Grandfathered Groundwater Rights or the equivalent thereof to withdraw groundwater in the Prescott Active Management Area for delivery to and use on the Reservation in accordance with the State of Arizona's Groundwater Code.

6.0 GRANITE CREEK WATER

6.1 The parties to this Agreement, except as provided in Sections 13(a) and 13(b) of the Act, recognize, ratify, confirm and declare to be valid CVID's rights and entitlements to water from the Verde River watershed and agree to not object to, dispute or challenge, in the Gila River Adjudication or in any other judicial or administrative proceeding, such rights and entitlements, which rights and entitlements are evidenced by, described, stated, claimed, confirmed or established in the following documents and instruments:


e. Statement of Claimant Form for Domestic Use No. 39-05-46143, In Re the General Adjudication of All Rights to Use Water in the Gila River System and Source, Nos. W-1 through W-4 (Maricopa County Super. Ct.).

f. Statement of Claimant Form for Irrigation and Other Uses No. 39-05-46144, In Re the General Adjudication of All Rights to Use Water in the Gila River System and Source, Nos. W-1 through W-4 (Maricopa County Super. Ct.).

g. Statement of Claimant Form for Irrigation Use No. 39-05-46145, In Re the General Adjudication of All Rights to Use Water in the Gila River System and Source, Nos. W-1 through W-4 (Maricopa County Super. Ct.).

h. Certificate of Water Right No. 1673.

i. Certificate of Water Right No. 1674.

j. Certificate of Water Right No. 593.


l. Water Right Registration Act Statement of Claim of Right to Use Public Waters of the State No. 36-40234.

m. Permit to Appropriate No. 33-86560, to the extent the exercise of such right is not adverse to the rights of Prescott pursuant to Arizona Public Service Co. v. Long, 160 Ariz. 479, 773 P.2d 988 (1989), or the Tribe pursuant to the Water Service Agreement and Subparagraph 4.4 of this Agreement.

n. Certificate of Irrigation Grandfathered Right No. 57-003001.0000.
6.2 Of such right or entitlement to Granite Creek surface water described in Subparagraph 6.1 hereof as is confirmed in the Gila River Adjudication, the Tribe shall be entitled each year to store, divert and use: (a) as its Minimum Annual Entitlement, fifty (50) percent of the flow, as measured at the State Highway 89 bridge across Granite Creek adjacent to the Reservation, until it has diverted five hundred and fifty (550) AFA; provided, however, that if the existing and customary beneficial uses of surface water by CVID pursuant to the rights described in Subparagraph 6.1 hereof are reduced to an annual entitlement of less than one thousand one hundred (1,100) AFA by a determination of the Court in the Gila River Adjudication which is not subject to further appeal, then the Tribe’s Minimum Annual Entitlement shall be reduced by an amount equal to one-half the difference between one thousand one hundred (1,100) AFA and CVID’s reduced entitlement; and (b) as its Maximum Annual Entitlement, an additional ten (10) percent of that portion of the flow of Granite Creek which exceeds 1100 AFA, as measured at the State Highway 89 bridge across Granite Creek adjacent to the Reservation, up to a total combined diversion of one thousand (1,000) AFA; provided, however, that if existing and customary beneficial uses of surface water by CVID pursuant to the rights described in Subparagraph 6.1 hereof are reduced by virtue of a determination by the Court in the Gila River Adjudication which is not subject to further appeal that one or more of such rights is or are invalid, the Tribe’s total Maximum Annual Entitlement pursuant to this Subparagraph shall be reduced by the same percentage as the percentage reduction in CVID’s use rights. The priority of storage,
diversion and use of surface water by the Tribe pursuant to this Subparagraph 6.2 shall be as determined by the confirmation of CVID's right to Granite Creek water in the Gila River Adjudication. Any surface water not stored, diverted or used by the Tribe in a year shall be available for use by CVID, and the Tribe's annual entitlement under this Subparagraph 6.2 shall not be carried over from year to year; provided, however, that: (i) any water stored by the Tribe during a given year may be left in storage and/or consumptively used by the Tribe in subsequent years without such storage and/or use being counted against the Tribe's annual entitlements for such subsequent years; (ii) if the flow of Granite Creek is insufficient in any year to permit the Tribe to divert five hundred and fifty (550) AFA pursuant to this Subparagraph 6.2, then an amount equal to the difference between the amount the Tribe actually diverts in that year and its five hundred and fifty (550) AFA Minimum Annual Entitlement shall be carried forward from year to year (but not to exceed four years) as a Deficiency until the Tribe is able to recover such Deficiency pursuant to this Subparagraph 6.2; and (iii) the Tribe's total Maximum Annual Entitlement pursuant to clause (b) of the first sentence of this Subparagraph 6.2 shall be increased in any given year by an amount equal to the sum of the Deficiencies carried forward from the preceding four years. If the Tribe is permitted to divert, and does divert, an amount in excess of one thousand (1,000) AFA pursuant to this Subparagraph 6.2, then the Tribe's accumulated Deficiencies shall be reduced by an amount equal to such excess. All such excess diversions shall be applied to the earliest deficiency still being
carried forward. Deficiencies older than four years shall lapse.

6.3 During such times as the Tribe receives water from Prescott
to which it has an absolute prior right (herein referred to as
"absolute priority water"), as more fully described in Subparagraph
5.1 of the Water Service Agreement, Prescott may elect, after
receiving the Tribe's permission, to divert from Granite Creek a
quantity of water equivalent to the absolute priority water delivered
to the Reservation. Any such diversion by Prescott shall be in lieu
of diversion by the Tribe of a corresponding portion of the Tribe's
Granite Creek right as described in Subparagraph 6.2 hereof, and shall
be subject to the same restrictions applicable to diversions by the
Tribe under Subparagraph 6.2 hereof.

6.4 CVID's obligations pursuant to this Paragraph 6.0 shall be
binding upon its successors and assigns. The parties to this
Agreement agree that, notwithstanding a change of circumstances such
as the termination of CVID's corporate existence, the Tribe's
entitlement pursuant to this Paragraph 6.0 shall remain in full force
and effect.

6.5 The parties to this Agreement, except as provided in
Sections 13(a) and 13(b) of the Act, recognize, ratify, confirm and
declare to be valid the Tribe's right and entitlement to store, divert
and beneficially use CVID surface water pursuant to this Paragraph 6.0
and agree to not object to, dispute or challenge, in the Gila River
Adjudication or in any other judicial or administrative proceeding,
this right and entitlement.
7.0 REGULATION OF TRIBAL WATER RESOURCES

7.1 As provided in Section 11(c) of the Act, the Tribe shall establish a groundwater management plan for the Reservation which, except to be consistent with the Water Service Agreement, this Agreement and the Act, will be compatible with the groundwater management plan in effect for the Prescott Active Management Area and will include an annual information exchange with the Arizona Department of Water Resources. In establishing a groundwater management plan pursuant to this Paragraph, the Tribe will enter into a Memorandum of Understanding with the Arizona Department of Water Resources for consultation. The Memorandum of Understanding will be in the form set out in Exhibit 7.1 to this Agreement.

7.2 Notwithstanding other law, the Tribe may establish a Tribal water code, consistent with the above-described groundwater management plan, under which the Tribe will manage, regulate, and control the water resources granted it in the Act, this Agreement, and the Water Service Agreement; provided, however, that such management, regulation and control shall not authorize any action inconsistent with the trust ownership of the Tribe's water resources.

8.0 ACQUISITION OF CAP CONTRACTS AND ESTABLISHMENT OF TRUST ACCOUNTS

8.1 In accordance with Section 6(d) of the Act, the Tribe hereby agrees to establish a trust account into which revenues from the Fund will be deposited. Revenues deposited into the Fund to the credit of the Tribe will be derived from the sale of the Tribe's CAP contract entitlement in accordance with Section 5 of the Act.
A. The Tribe hereby agrees that revenues from the trust account may only be used to defray the Tribe's water service costs under the Water Service Agreement or to develop and maintain facilities for water or Effluent use on the Reservation. Any funds withdrawn from the trust account but not used for the purposes stated herein shall be returned to the Fund, with interest at the Federal Reserve Discount Rate (the interest rate charged on loans to depository institutions by the Federal Reserve Banks) in effect from time to time.

B. The Tribe agrees to permit complete and thorough audits of the trust account and all expenditures therefrom and deposits thereto on an annual basis. Such audits may be conducted by the Area Director, Phoenix Area Office, Bureau of Indian Affairs or its designees.

8.2 In accordance with Section 6(d) of the Act, Prescott hereby agrees to establish a trust account into which revenues from the Verde River Basin Water Fund will be deposited. Revenues deposited to the Fund to the credit of Prescott will be derived from the sale of Prescott's CAP contract entitlement in accordance with Section 5 of the Act.

A. Prescott hereby agrees that revenues from the trust account may only be used to defray expenses associated with the investigation, acquisition or development of alternative sources of water to replace the CAP water relinquished under the Act. Alternative sources shall be understood to include, but not be limited to, retirement of agricultural land and acquisition of associated
water rights, development of ground water resources outside the 
Prescott Active Management Area established pursuant to the laws of 
the State of Arizona and artificial recharge; except that none of the 
moneys paid to Prescott may be used for construction or renovation of 
the city's existing waterworks or water delivery system. Any funds 
drawn from the trust account but not used for the purposes stated 
herein shall be returned to the Fund, with interest at a rate equal 
to the average rate of interest paid on governmental deposits by the 
Arizona State Treasurer's Pool during the period of time that the 
monies were erroneously expended from the trust account.

B. Prescott also agrees that it will comply with all 
applicable federal environmental and state environmental and water 
laws in developing alternative water sources. Development of such 
alternative water sources shall not be inconsistent with the goals of 
the Prescott Active Management Area, preservation of the riparian 
habitat, flows and biota of the Verde River and its tributaries.

C. Prescott agrees to permit complete and thorough audits 
of the trust account and all expenditures therefrom and deposits 
thereon on an annual basis. Such audits may be conducted by the 
Regional Director, Lower Colorado River Region, Bureau of Reclamation, 
or its designees.

9.0 WAIVER OF CLAIMS

9.1 Except as provided in Subparagraph 9.2 hereof, the Tribe, 
on behalf of itself and its members, and the United States shall 
execute a waiver and release of:
A. Any and all past and present claims of water rights or injuries to water rights (including water rights in groundwater, surface water and effluent) for lands within the Reservation, from time immemorial to the date of execution of such waiver and release, which the Tribe and/or its members may have, against the United States, the State of Arizona or any agency or political subdivision thereof, or any other person, corporation or municipal corporation, arising under the laws of the United States or the State of Arizona.

B. Any and all future claims of rights to water (including water rights in groundwater, surface water and effluent) for lands within the Reservation, from and after the date of execution of such waiver and release, which the Tribe and/or its members may have, against the United States, the State of Arizona or any agency or political subdivision thereof, or any other person, corporation or municipal corporation, arising under the laws of the United States or the State of Arizona.

C. Any and all past, present and future claims of water rights or injuries to water rights (including water rights in groundwater, surface water and effluent) for lands outside of the exterior boundaries of the Reservation for claims based upon aboriginal occupancy, which the Tribe and/or its members may have, against the United States, the State of Arizona or any agency or political subdivision thereof, or any other person, corporation or municipal corporation, arising under the laws of the United States or the State of Arizona. The waiver and release will be in the form set out in Exhibit 9.1 to this Agreement.
9.2 Notwithstanding the execution by the Tribe of the waiver and release described in Subparagraph 9.1 hereof, the Tribe, its members, and the United States for their benefit, shall retain the right to assert the following claims:

A. Claims for protection and/or enforcement of the Tribe's surface water, groundwater and effluent rights and entitlements as provided for in this Agreement under the continuing jurisdiction of the Court in the Gila River Adjudication or otherwise.

B. Claims for the breach or enforcement of the terms of this Agreement or rights or entitlements recognized herein, or for the breach or enforcement of the Water Service Agreement or rights or entitlements recognized therein, including claims for future injuries to such rights and entitlements.

C. Claims for past, present and/or future injuries to Tribal natural resources and property, including but not limited to surface water and groundwater and rights thereto, resulting from, caused by or related to pollution or contamination of any kind.

D. Claims for water rights and/or injuries to water rights asserted in the circumstances described in Subparagraphs 10.3, 10.4 and 10.5 hereof.

9.3 Any entitlement to water of any individual member of the Tribe for lands within the Reservation shall be satisfied out of the water resources provided to the Tribe in this Agreement.

9.4 Except as provided in Paragraph 9.2 hereof, the United States shall not assert any claim against the State of Arizona and any agency or political subdivision thereof or any other person,
corporation, or municipal corporation, in its own right or for the
benefit of the Tribe and its members based upon (1) water rights or
injuries to water rights of the Tribe and its members; or (2) water
rights or injuries to water rights held by the United States for the
benefit of the Tribe and its members.

9.5 The parties shall file a stipulation and form of judgment
in the Gila River Adjudication in the form of Exhibit 9.5 hereto. The
United States or the Tribe shall be permitted to support any claim of
any party to this Agreement filed in the Gila River Adjudication from
which the Tribe’s water rights under this Agreement are derived.

9.6 In the event any party to this Agreement files a lawsuit in
a United States district court relating only and directly to the
interpretation or enforcement of this Agreement or the Act, naming the
United States of America or the Tribe as parties, the sovereign
immunity of the United States and the Tribe from such suit is waived
by Section 11(a) of the Act. In the event Prescott submits a dispute
under the Water Service Agreement to arbitration or seeks review by
the United States District Court for the District of Arizona of an
arbitration award under the Water Service Agreement, any claim by the
Tribe to sovereign immunity from such arbitration or review is waived
by Section 11(a) of the Act.

9.7 Nothing herein shall affect the water rights or claims
related to any trust allotment located outside the exterior boundaries
of the Reservation of any member of the Tribe; provided, however, that
any water rights determined to exist for such allotments shall not be
exercised for use on the Reservation.
9.8 Nothing herein shall be deemed to recognize or establish any right of a member of the Tribe to water on the Tribe’s Reservation.

9.9 Nothing herein shall prevent the Tribe from participating with other entities in further activities to augment the water supply available to the Prescott Active Management Area and the Granite Creek watershed. In addition to the water provided to the Tribe under this Agreement and the Water Service Agreement, the Tribe may, consistent with state and federal law, acquire rights to water pursuant to state law or by contract with the United States; provided, however, that no rights so acquired shall be based upon claims waived pursuant to this Paragraph 9.0 and Section 10 of the Act, nor shall the acquisition of any such rights vitiate the Waiver and Release of Claims executed by the Tribe and the United States pursuant to this Paragraph 9.0 and Section 10 of the Act.

10.0 ENFORCEABILITY DATE AND RELATED MATTERS

10.1 This Agreement shall be effective and binding when it has been executed by all parties hereto and when the parties to this Agreement have executed all exhibits to the Agreement which call for their signatures. Other than to take all steps described in this Subparagraph 10.1 to occur, no party to this Agreement shall be required to perform any of the obligations, or be entitled to receive any of the benefits, under the Agreement or under any of the Exhibits hereto until such time as the waivers authorized in Section 10(b) of the Act have become effective pursuant to Section 12(a) of the Act, which date is referred to herein as the “Enforceability Date”. In the event the waivers authorized in Section 10(b) of the Act have not
become effective by December 31, 1995, this Agreement shall be of no further force or effect.

10.2 Exhibit 2.1 hereto is the Act, which authorizes the federal action required to carry out this Agreement. Any act of Congress which materially amends the Act set forth in Exhibit 2.1 hereto, as it affects this Agreement, prior to the Enforceability Date of this Agreement, without the written consent of the parties adversely affected by such amendment, shall relieve all parties to this Agreement of their obligations hereunder.

10.3 In the event the waivers authorized in Section 10(b) of the Act have become effective and a party to the Gila River Adjudication has obtained the reversal of the judgment of the Maricopa County Superior Court approving Exhibit 9.5 hereto and no further appeal may be taken, the parties to this Agreement shall:

A. Perform all of their respective obligations under this Agreement, unless otherwise ordered by a court of competent jurisdiction; and

B. Permit the Tribe and its members, and the United States for their benefit, to assert in the Gila River Adjudication claims for water rights and entitlements in excess of the Tribe’s rights and entitlements under this Agreement and the Water Service Agreement, and the other parties to this Agreement agree not to assert any defense against the Tribe and the United States; however, the Tribe and the United States agree that a reserved right awarded to the Tribe will be satisfied as provided in this Agreement and the Water Service Agreement, and that if a right in excess of the Tribe’s rights and
entitlements under this Agreement and the Water Service Agreement is awarded, the excess of such right will not be exercised, in any phase of the Gila River Adjudication or any subsequent proceedings, against junior rights held by other parties to this Agreement.

10.4 In the event the waivers authorized in Section 10(b) of the Act have become effective and a court of competent jurisdiction has permanently ordered any single party to this Agreement not to perform an obligation to deliver water to the Tribe as provided in this Agreement and no further appeal may be taken,

   A. All other parties to this Agreement shall perform all of their respective obligations under this Agreement, unless otherwise ordered by a court of competent jurisdiction;

   B. The party ordered not to perform an obligation to deliver water to the Tribe as provided in this Agreement shall perform all of its remaining obligations, if any, under this Agreement; that party shall be relieved of its obligations under this Agreement only to the extent necessary to comply with the court’s order; and

   C. The Tribe and its members, and the United States for their benefit, may assert in the Gila River Adjudication claims for water rights and entitlements in excess of the Tribe’s rights and entitlements under this Agreement and the Water Service Agreement, and the other parties to this Agreement agree not to assert any defense against the Tribe and the United States; however, the Tribe and the United States agree that a reserved right awarded to the Tribe will be satisfied as provided in this Agreement and the Water Service Agreement, to the extent not precluded by an order of a court of
competent jurisdiction as provided in this Subparagraph 10.4, and that
if a right in excess of the Tribe's rights and entitlements under this
Agreement and the Water Service Agreement is awarded, the excess of
such right will not be exercised, in any phase of the Gila River
Adjudication or any subsequent proceedings, against junior rights held
by other parties to this Agreement.

10.5 In the event the waivers authorized in Section 10(b) of the
Act have become effective and a court of competent jurisdiction has
permanently ordered more than one of the parties to this Agreement not
to perform an obligation to deliver water to the Tribe as provided in
this Agreement and no further appeal may be taken, then, unless
otherwise agreed by the Tribe, this Agreement shall be null and void
and, except as provided in Subparagraph 9.6 hereof and in this
Subparagraph 10.5, all parties shall be relieved of their obligations
under this Agreement.

11.0 **STATE OF ARIZONA CONTRIBUTION**

11.1 Pursuant to Paragraph 8.0, Section 6(d) of the Act and by
contract with the Secretary, the Tribe shall establish a trust account
into which funds appropriated pursuant to the Act and this Agreement
shall be deposited for use by the Tribe consistent with Section 7(b)
of the Act.

11.2 Upon establishment of the trust account pursuant to
Subparagraph 11.1 hereof, the Tribe shall so notify the State of
Arizona. Within one calendar year of such notice, but not later than
December 31, 1995, the State of Arizona, subject to appropriation by
the Legislature, shall deposit or cause to be deposited $200,000.00
into the trust account established pursuant to Subparagraph 11.1 hereof.

11.3 In the event the waivers authorized in Section 10(b) of the Act have not become effective by December 31, 1995, the Tribe shall return to the State of Arizona any funds appropriated and deposited by the State of Arizona into the Tribe’s trust account pursuant to Subparagraph 11.2 hereof.

12.0 OTHER PROVISIONS

12.1 Cooperation with Tribal Water Development. The State of Arizona, Prescott and CVID will cooperate with the Tribe in obtaining any necessary Federal approval required for the Tribe’s enjoyment of the rights and entitlements provided by this Agreement and the Water Service Agreement, including their good offices to assist in obtaining the cooperation of others necessary for such approvals. The United States, Prescott and CVID will cooperate with the Tribe in obtaining any necessary State approval required for the Tribe’s enjoyment of the rights and entitlements provided by this Agreement and the Water Service Agreement, including their good offices to assist in obtaining the cooperation of others necessary for such approvals.

12.2 Cancellation by State, Prescott and CVID. The state, Prescott or CVID may cancel this Agreement without penalty or further obligation pursuant to A.R.S. § 38-511, if any person significantly involved in initiating, negotiating, securing, drafting or creating this Agreement on behalf of the state, Prescott or CVID is an employee or becomes a consultant to any other party to this Agreement with respect to the subject matter of this Agreement while this Agreement
or any extension of this Agreement is in effect. Cancellation shall be effective when written notice from the Governor or the governing bodies of Prescott or CVID is received by all parties to this Agreement unless the notice specifies a later time. To the extent A.R.S. § 38-511 is applicable to this Agreement, Prescott hereby represents that the persons significantly involved in the initiating, negotiating, securing, drafting and creating of this Agreement on behalf of Prescott are John R. Moffitt, City Attorney, and Brad Huza, Environmental Services Director, and the other parties here to each hereby represents that neither Mr. Moffitt nor Mr. Huza is or has been an employee or agent of or consultant to that party during any time material to the creation of this Agreement. Each party hereto, other than Prescott, also hereby covenants to not employ either Mr. Moffitt or Mr. Huza as an employee, agent or consultant for a term of at least three years following the execution hereof. To the extent A.R.S. § 38-511 is applicable to this Agreement, CVID hereby represents that the persons significantly involved in the initiating, negotiating, securing, drafting and creating of this Agreement on behalf of CVID are Melvin Shellhorn, Delbert Applebee, Robert Davis and Helen Wells, as past or current members of the Board, and Thelton D. Beck and L. Richard Mabery, CVID's counsel, and the other parties here to each hereby represents that neither Mr. Beck nor Mr. Mabery is or has been an employee or agent of or consultant to that party during any time material to the creation of this Agreement. Each party hereto, other than CVID, also hereby covenants to not employ either Mr. Beck or Mr. Mabery as an employee, agent or consultant for a term of at least
three years following the execution hereof.

12.3 **Use Limitation.** The water made available to the Tribe from
the various sources under this Agreement is solely for use on the
Reservation, except as otherwise provided. The water made available
to the Tribe under this Agreement may be put to any beneficial use or
reuse on the Reservation without restriction.

12.4 **Effect of Non-Use.** In recognition of the Tribe's waiver and
release of claims based on federal law pursuant to Exhibit 9.1 hereto,
said federal-law claims not being subject to loss due to non-use under
current federal law, the parties recognize and acknowledge that the
water rights and entitlements acquired or confirmed by the Tribe
hereunder are not subject to forfeiture or abandonment due to non-use
by the Tribe. The parties agree to not assert the defenses of
forfeiture, abandonment due to non-use or like defenses based upon the
passage of time against the Tribe.

12.5 **Environmental Compliance.** Environmental compliance shall
be as set forth in Section 8 of the Act.

12.6 **Disclaimer.** Nothing in this Agreement shall be construed
as establishing any standard to be used for the quantification of
federal reserved rights, aboriginal claims, or any other Indian water
claims in any judicial or administrative proceeding.

12.7 **Evidentiary Effect of Negotiations.** This Agreement has been
arrived at in the process of good faith negotiation for the purpose
of resolving legal disputes, including pending litigation, and all
parties hereto agree that no offers and/or compromises made in the
course thereof shall be construed as admissions against interest or
be used in any legal proceeding other than one for approval, confirmation, interpretation, or enforcement of this Agreement.

12.8 **Effect of Execution by State of Arizona.** Execution of this Agreement by the State of Arizona constitutes the confirmation that it is the policy of the State of Arizona to assist in carrying out the provisions hereof to the extent it may do so in accordance with its responsibility and authority under the law. It is not intended that this Agreement shall be determinative of the action to be taken by any state agency in any adjudicatory or rule making proceeding. Nothing herein shall be construed as a waiver of any rights which the State of Arizona has as to its trust lands under the Enabling Act.

12.9 **Rights Held in Trust.** The Tribe's rights hereunder shall be held in trust by the United States for the benefit of the Tribe as other Indian rights are held. Nothing contained in this Agreement shall be deemed to alter, amend or diminish the status of those rights.

12.10 **Succession.** This Agreement shall inure to the benefit of, and shall be binding upon, the respective successors and assigns of the parties hereto.

12.11 **Destruction of Facilities.** To the extent that use of water by the Tribe under this Agreement is dependent on diversion, storage and/or transmission facilities, the destruction of any such facilities by any cause shall not permanently extinguish the Tribe's right to receive water otherwise made available by the affected facility; however, such destruction may temporarily excuse the parties of the obligation to deliver such water to the Tribe until the affected

-28-
facility is repaired or replaced or other suitable facilities have
been agreed to by the principal parties in interest. Any party
responsible for repairing or replacing an affected facility under
other contractual arrangements shall have that same obligation under
this Agreement. In the event no party has such an obligation, all of
the parties, including the Secretary, shall use all reasonable efforts
to provide a permanent equitable substitute source for the affected
water supply in a manner consistent with the parties' respective
obligations under this Agreement.

12.12 Contingent on Appropriation of Funds. The expenditure or
advance of any money or the performance of any obligation by the
United States under this Agreement shall be contingent upon
appropriation of funds therefor. No liability shall accrue to the
United States in case funds are not appropriated.

12.13 Officials Not to Benefit. No member of or delegate to
Congress or Resident Commissioner shall be admitted to any share or
part of this Agreement or to any benefit that may arise herefrom.
This restriction shall not be construed to extend to this Agreement
if made with a corporation or company for its general benefit.

12.14 Additional Documents. Each party agrees in good faith to
execute such further or additional documents as may be necessary or
appropriate to fully carry out the intent and purpose of this
Agreement.

12.15 Governing Law. This Agreement shall be governed by all
applicable laws of the United States of America and the State of
Arizona. Nothing contained herein waives the right of the United
States or the Tribe to object to the jurisdiction of the court of the State of Arizona to adjudicate any disputes arising under this Agreement.

12.16 **Headings.** The headings of this Agreement are for reference only and shall not limit or define the meaning of any provision of this Agreement.

12.17 **Counterparts.** This Agreement may be executed in duplicate originals, each of which shall constitute an original Agreement.

12.18 **Notices.** Any notice to be given hereunder shall have been properly given or made when received by the officer or manager designated herein, or two (2) days after deposit with the United States Postal Service, certified or registered mail, postage prepaid, addressed as follows:

If to the United States:

Secretary of the Interior  
Department of the Interior  
Washington, D.C. 20240

Area Director  
Phoenix Area Office  
Bureau of Indian Affairs  
P.O. Box 10  
Phoenix, Arizona 85001

With a copy to:

Office of Solicitor  
Department of Interior  
Two North Central Avenue  
Suite 1130  
Phoenix, Arizona 85004
If to the State of Arizona:

Office of the Governor
1700 West Washington
Phoenix, Arizona 85007

With a copy to:

Director
Arizona Department of Water Resources
15 South 15th Avenue, Suite 204
Phoenix, Arizona 85007

If to the Tribe:

Yavapai-Prescott Indian Tribe
530 Merritt Avenue
Prescott, Arizona 86301
Attn: President

With a copy to:

Steptoe & Johnson
40 North Central Avenue, 24th Floor
Phoenix, Arizona 85004
Attn: David J. Bodney, Esq.

If to Prescott:

Prescott City Manager
P.O. Box 2059
Prescott, Arizona 86302

With copies to:

Prescott City Attorney
P.O. Box 2059
Prescott, Arizona 86302

City of Prescott
Environmental Services Director
P.O. Box 2059
Prescott, Arizona 86302
If to CVID:

Chino Valley Irrigation District
P.O. Box 105
Chino Valley, Arizona 86323
Attn: Bob Williams

With a copy to:

Murphy, Schmidt, Lutey & Beck
P.O. Box 591
Prescott, Arizona 86302-0591
Attn: Thelton D. Beck, Esq.

or addressed to such other address as the party to receive such notice shall have designated by written notice given as required by this paragraph.

12.19 Entire Agreement. This Agreement constitutes the entire agreement between the parties and no understandings or obligations not herein expressly set forth shall be binding upon them. This Agreement may not be modified or amended in any manner unless in writing and signed by the parties.

12.20 Term. The term of this Agreement shall be in perpetuity.

IN WITNESS WHEREOF, the parties hereto have executed the Agreement herein the day and year first above written.

THE UNITED STATES OF AMERICA

By: [Signature]

Asst. Secretary of the Interior
STATE OF ARIZONA

By: [Signature]
Governor

YAVAPAI-PRESCHOOL TRIBE

By: [Signature]
STAN RICE, JR., President

CITY OF PRESCOTT, a municipal corporation

By: [Signature]
DAITON RUTKOWSKI, Mayor

Pursuant to Arizona Revised Statutes Section § 11-952(D), the foregoing agreement has been reviewed by the undersigned attorney for the City of Prescott, who has determined that the agreement is in proper form and is within the powers and authority granted under the laws of the State of Arizona to the City of Prescott.

JOHN R. MORRITT, City Attorney

CHINO VALLEY IRRIGATION DISTRICT

By: [Signature]

Pursuant to Arizona Revised Statutes Section § 11-952(D), the foregoing agreement has been reviewed by the undersigned attorney for the Chino Valley Irrigation District, who has determined that the agreement is in proper form and is within the powers and authority granted under the laws of the State of Arizona to the Chino Valley Irrigation District.

THELTON D. BECK, Attorney
PUBLIC LAW 103–434 [S. 1146]; October 31, 1994

YAVAPAI-PREScott WATER RIGHTS

An Act to provide for the settlement of the water rights claims of the Yavapai-Prescott Indian Tribe in Yavapai County, Arizona, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled.

TITLE I—YAVAPAI-PREScott INDIAN TRIBE WATER RIGHTS SETTLEMENT

SEC. 101. SHORT TITLE.

This title may be cited as the “Yavapai-Prescott Indian Tribe Water Rights Settlement Act of 1994”.

SEC. 102. CONGRESSIONAL FINDINGS AND DECLARATIONS.

(a) FINDINGS.—The Congress finds that—

(1) it is the policy of the United States, in fulfillment of its trust responsibility to the Indian tribes, to promote Indian self-determination and economic self-sufficiency, and to settle, wherever possible, the water rights claims of Indian tribes without lengthy and costly litigation;

(2) meaningful Indian self-determination and economic self-sufficiency depend on the development of viable Indian reservation economies;

(3) quantification of rights to water and development of facilities needed to utilize tribal water supplies effectively is essential to the development of viable Indian reservation economies, particularly in and western States;

(4) on June 7, 1935, and by actions subsequent thereto, the United States established a reservation for the Yavapai-Prescott Indian Tribe in Arizona adjacent to the city of Prescott;

(5) proceedings to determine the full extent of Yavapai-Prescott Tribe’s water rights are currently pending before the Superior Court of the State of Arizona in and for Maricopa County, as part of the general adjudication of the Gila River system and source;

(6) recognizing that final resolution of the general adjudication will take many years and entail great expense to all parties, prolong uncertainty as to the full extent of the Yavapai-Prescott Tribe’s entitlement to water and the availability of water supplies to fulfill that entitlement, and impair orderly planning and development by the Tribe and the city of Prescott:

the Tribe, the city of Prescott, the Chino Valley Irrigation District, the

(7) representative of Prescott’s Arizona and Agreement among the water supplies of the Tribe’s

(8) pursuant Service Agreement the Yavapai-Chino Valley agreements will be on-reservation rationalized and fulfill the trust it is appropriate implemented, firming up and the Yavapai-Chino Valley

(9) to ensure efficiently也无法

(10) to the Prescott Tribe:

(b) DECLARATION of purposes of the Agreement among the Chino Valley:

(1) to augment the

(2) to augment the United States

(3) to augment the United States

(4) to augment the United States

(5) to augment the United States

SEC. 103. DEFINITIONS

For purposes

108 STAT. 4526
YAVAPAI-PRESCOTT WATER RIGHTS

District, the State of Arizona and the United States have sought to settle all claims to water between and among them.

7. Representatives of the Yavapai-Prescott Tribe, the city of Prescott, the Chino Valley Irrigation District, the State of Arizona and the United States have negotiated a Settlement Agreement to resolve all water rights claims between and among them, and to provide the Tribe with long-term, reliable water supplies for the orderly development and maintenance of the Tribe’s reservation.

8. Pursuant to the Settlement Agreement and the Water Service Agreement, the quantity of water made available to the Yavapai-Prescott Tribe by the city of Prescott and the Chino Valley Irrigation District will be secured, such Agreements will be continued in perpetuity, and the Tribe’s continued on-reservation use of water for municipal and industrial, recreational and agricultural purposes will be provided for.

9. To advance the goals of Federal Indian policy and to fulfill the trust responsibility of the United States to the Tribe, it is appropriate that the United States participate in the implementation of the Settlement Agreement and assist in firming up the long-term water supplies of the city of Prescott and the Yavapai-Prescott Tribe so as to enable the Tribe to utilize fully its water entitlements in developing a diverse, efficient reservation economy; and

10. The assignment of the CAP contract of the Yavapai-Prescott Tribe and the CAP subcontract of the city of Prescott is a cost-effective means to ensure reliable, long-term water supplies for the Yavapai-Prescott Tribe and to promote efficient, environmentally sound use of available water supplies in the Verde River basin.

(b) DECLARATION OF PURPOSES.—The Congress declares that the purposes of this title are—

1. to approve, ratify and confirm the Settlement Agreement among the Yavapai-Prescott Tribe, the city of Prescott, the Chino Valley Irrigation District, the State of Arizona and the United States;

2. to authorize and direct the Secretary of the Interior to execute and perform the Settlement Agreement;

3. to authorize the actions and appropriations necessary for the United States to fulfill its legal and trust obligations to the Yavapai-Prescott Tribe as provided in the Settlement Agreement and this title;

4. to require that expenditures of funds obtained through the assignment of CAP contract entitlements by the Yavapai-Prescott Tribe and Prescott for the acquisition or development of replacement water supplies in the Verde River basin shall not be inconsistent with the goals of the Prescott Active Management Area, preservation of riparian habitat, flows and biota of the Verde River and its tributaries; and

5. to repeal section 406(k) of Public Law 101–628 which authorizes $30,000,000 in appropriations for the acquisition of land and water resources in the Verde River basin and for the development thereof as an alternative source of water for the Fort McDowell Indian Community.

SEC. 103. DEFINITIONS.

For purposes of this title:

108 STAT. 4527
LAW OF 103rd CONG.—2nd SESS. Oct. 31


(2) The term “CAWCD” means the Central Arizona Water Conservation District, organized under the laws of the State of Arizona, which is the contractor under a contract with the United States, dated December 1, 1958, for the delivery of water and repayment of costs of the Central Arizona Project.

(3) The term “CVID” means the Chino Valley Irrigation District, an irrigation district organized under the laws of the State of Arizona.

(4) The term “Prescott AMA” means the Active Management Area, established pursuant to Arizona law and encompassing the Prescott ground water basin, wherein the primary goal is to achieve balance between annual ground water withdrawals and natural and artificial recharge by the year 2025.

(5) The term “Prescott” means the city of Prescott, an Arizona municipal corporation.

(6) The term “Reservation” means the reservation established by the Act of June 7, 1935 (49 Stat. 332) and the Act of May 15, 1956 (70 Stat. 157) for the Yavapai-Prescott Tribe of Indians.

(7) The term “Secretary” means the Secretary of the United States Department of the Interior.

(8) The term “Settlement Agreement” means that agreement entered into by the city of Prescott, the Chino Valley Irrigation District, the Yavapai-Prescott Indian Tribe, the State of Arizona, and the United States, providing for the settlement of all water claims between and among them.

(9) The term “Tribe” means the Yavapai-Prescott Indian Tribe, a tribe of Yavapai Indians duly recognized by the Secretary.

(10) The term “Water Service Agreement” means that agreement between the Yavapai-Prescott Indian Tribe and the city of Prescott, as approved by the Secretary, providing for water, sewer, and effluent service from the city of Prescott to the Yavapai-Prescott Tribe.

SEC. 104. RATIFICATION OF SETTLEMENT AGREEMENT.

(a) APPROVAL OF SETTLEMENT AGREEMENT.—To the extent the Settlement Agreement does not conflict with the provisions of this title, such Agreement is approved, ratified and confirmed. The Secretary shall execute and perform such Agreement, and shall execute any amendments to the Agreement and perform any action required by any amendments to the Agreement which may be mutually agreed upon by the parties.

(b) PERPETUITY.—The Settlement Agreement and Water Service Agreement shall include provisions which will ensure that the benefits to the Tribe thereunder shall be secure in perpetuity. Notwithstanding the provisions of section 2103 of the Revised Statutes of the United States (25 U.S.C. 81) relating to the term of the Agreement, the Secretary is authorized and directed to approve the Water Service Agreement with a perpetual term.

SEC. 105. ASSIGNMENT OF CAP WATER.

The Secretary is authorized and directed to arrange for the assignment of, or to purchase, the CAP contract of the Tribe and the CAP subcontract deposit into the Verdon to section 106.

SEC. 106. REPLACEMENT.

(a) FUND.—The State, as the “Verde River Fund” to provide a be available without fixed

(b) CONTENT OF FUND—obtained through the

c) PAYMENTS FROM the publication of

d) CONTRACTS—precedent to the pay

the purpose and is to be used to a depository to the Fund's

technical requirements, and if any amount determined by the purpose and is to be used by the

SEC. 107. EXPENDITURES.

(a) BY THE CITY—its CAP contract to section 106(d), the expenses associated with the use of the CAP water, and the expenditure of alternative lands and ground water resources, or any amount determined by the purpose and is to be used by the

to the Tribe its CAP contract and section 106(d), shall the Water Service Agreement, or any member of the Board of Directors, or any employee of Fre
the CAP subcontract of the city of Prescott to provide funds for deposit into the Verde River Basin Water Fund established pursuant to section 106.

SEC. 106. REPLACEMENT WATER FUND; CONTRACTS.

(a) Fund.—The Secretary shall establish a fund to be known as the “Verde River Basin Water Fund” (hereinafter called the “Fund”) to provide replacement water for the CAP water relinquished by the Tribe and by Prescott. Moneys in the Fund shall be available without fiscal year limitations.

(b) Content of Fund.—The Fund shall consist of moneys obtained through the assignment or purchase of the contract and subcontract referenced in section 105, appropriations as authorized in section 109, and any moneys returned to the Fund pursuant to subsection (c) of this section.

(c) Payments From Fund.—The Secretary shall, subsequent to the publication of a statement of findings as provided in section 112(a), promptly cause to be paid from the Fund to the Tribe, the amounts deposited to the Fund from the assignment or purchase of the Tribe’s CAP contract, and, to the city of Prescott, the amounts deposited to the Fund from the assignment or purchase of the city’s CAP subcontract.

(d) Contracts.—The Secretary shall require, as a condition precedent to the payment of any moneys pursuant to subsection (c), that the Tribe and Prescott agree, by contract with the Secretary, to establish trust accounts into which the payments would be deposited and administered, to use such moneys consistent with the purpose and intent of section 107, to provide for audits of such accounts, and for the repayment to the Fund, with interest, any amount determined by the Secretary not to have been used within the purpose and intent of section 107.

SEC. 107. EXPENDITURES OF FUNDS.

(a) By the City.—All moneys paid to Prescott for relinquishing its CAP subcontract and deposited into a trust account pursuant to section 106(d), shall be used for the purposes of defraying expenses associated with the investigation, acquisition or development of alternative sources of water to replace the CAP water relinquished under this title. Alternative sources shall be understood to include, but not be limited to, retirement of agricultural land and acquisition of associated water rights, development of ground water resources outside the Prescott Active Management Area established pursuant to the laws of the State of Arizona, and artificial recharge; except that none of the moneys paid to Prescott may be used for construction or renovation of the city’s existing waterworks or water delivery system.

(b) By the Tribe.—All funds paid to the Tribe for relinquishing its CAP contract and deposited into a trust account pursuant to section 106(d), shall be used to defray its water service costs under the Water Service Agreement or to develop and maintain facilities for on-reservation water or effluent use.

(c) No Per Capita Payments.—No amount of the Tribe’s portion of the Fund may be used to make per capita payments to any member of the Tribe, nor may any amount of any payment made pursuant to section 106(c) be distributed as a dividend or per capita payment to any constituent, member, shareholder, director or employee of Prescott.
Oct. 31

LAW OF 103rd CONG.—2nd SESS. Oct. 31
Sec. 107

(d) DISCLAIMER.—Effective with the payment of funds pursuant to section 106(c), the United States shall not be liable for any claim or cause of action arising from the use of such funds by the Tribe or by Prescott.

SEC. 108. ENVIRONMENTAL COMPLIANCE.

The Secretary, the Tribe and Prescott shall comply with all applicable Federal environmental and State environmental and water laws in developing alternative water sources pursuant to section 107(a). Development of such alternative water sources shall not be inconsistent with the goals of the Prescott Active Management Area, preservation of the riparian habitat, flows and biota of the Verde River and its tributaries.

SEC. 109. APPROPRIATIONS AUTHORIZATION AND REPEAL.

(a) AUTHORIZATION.—There are authorized to be appropriated to the Fund established pursuant to section 106(a):

(1) Such sums as may be necessary, but not to exceed $200,000, to the Secretary for the Tribe's costs associated with judicial confirmation of the settlement.

(2) Such sums as may be necessary to establish, maintain and operate the gauging station required under section 111(e).

(b) STATE CONTRIBUTION.—The State of Arizona shall contribute $200,000 to the trust account established by the Tribe pursuant to the Settlement Agreement and section 106(d) for uses consistent with section 107(b).

(c) REPEAL.—Subsection 406(k) of the Act of November 28, 1990 (Public Law 101-626; 104 Stat. 4457) is repealed.

SEC. 110. SATISFACTION OF CLAIMS.

(a) WAIVER.—The benefits realized by the Tribe or any of its members under the Settlement Agreement and this title shall constitute full and complete satisfaction of all claims by the Tribe and all members' claims for water rights or injuries to water rights under Federal and State laws (including claims for water rights in ground water, surface water and effluent) from time immemorial to the effective date of this title, and for any and all future claims of water rights (including claims for water rights in ground water, surface water, and effluent) from and after the effective date of this title. Nothing in this title shall be deemed to recognize or establish any right of a member of the Tribe to water on the Tribe's reservation.

(b) WAIVER AND RELEASE.—The Tribe, on behalf of itself and its members, and the Secretary on behalf of the United States, are authorized and required, as a condition to the implementation of this title, to execute a waiver and release, except as provided in subsection (d) and the Settlement Agreement, of all claims of water rights or injuries to water rights (including water rights in ground water, surface water and effluent), from and after the effective date of this title, which the Tribe and its members may have, against the United States, the State of Arizona or any agency or political subdivision thereof, or any other person, corporation, or municipal corporation, arising under the laws of the United States or the State of Arizona.

(c) WAIVER BY UNITED STATES.—Except as provided in subsection (d) and the Settlement Agreement, the United States, in its own right or on behalf of the Tribe, shall not assert any claim against the State of Arizona or any political subdivision thereof, or against any other person, arising under the laws of Arizona or the United States, and its members or rights held by the members.

(d) RIGHTS REPEAL.—The rights authorized in subsection (a) shall be effective for the term specified in the Settlement Agreement.

(e) JURISDICTION.—In any action arising under the Settlement Agreement, the United States District Court for the District of Arizona shall have exclusive jurisdiction.

(f) CLAIMS.—No claim shall arise under this title.

(g) DISCLAIMER.—The United States makes no claims or representations regarding the exterior boundaries of the Tribe.

(h) FULL SATISFY.—The United States, the Tribe, and Prescott may have, and no assessment shall be made against any lands within the boundaries of the Tribe.

SEC. 111. MISCELLANEOUS.

(a) JOINING OF SETTLEMENT AGREEMENT.—If any jurisdictional court relating only a portion of the Settlement Agreement to the United States or to the Tribe, such jurisdictional court may join the United States, the Tribe, and Prescott in the event a settlement is reached.

(b) NO REIMBURSEMENT.—The United States shall not be liable for reimbursement for any lands within the boundaries of the Tribe, and no assessment shall be made against any lands within the boundaries of the Tribe.

(c) WATER MANAGEMENT.—The United States, the Tribe, and Prescott shall continue in their existing management plans.
or against any other person, corporation, or municipal corporation, arising under the laws of the United States or the State of Arizona based upon water rights or injuries to water rights of the Tribe and its members or based upon water rights or injuries to water rights held by the United States on behalf of the Tribe and its members.

d) RIGHTS RETAINED.—In the event the waivers of claims authorized in subsection (b) of this section do not become effective pursuant to section 112(a), the Tribe, and the United States on behalf of the Tribe, shall retain the right to assert past and future water rights claims as to all reservation lands.

e) JURISDICTION.—The United States District Court for the District of Arizona shall have original jurisdiction of all actions arising under this title, the Settlement Agreement and the Water Service Agreement, including review pursuant to title 9, United States Code, of any arbitration and award under the Water Service Agreement.

f) CLAIMS.—Nothing in this title shall be deemed to prohibit the Tribe, or the United States on behalf of the Tribe, from asserting or maintaining any claims for the breach or enforcement of the Settlement Agreement or the Water Service Agreement.

g) DISCLAIMER.—Nothing in this title shall affect the water rights or claims related to any trust allotment located outside the exterior boundaries of the reservation of any member of the Tribe.

h) FULL SATISFACTION OF CLAIMS.—Payments made to Prescott under this title shall be in full satisfaction for any claim that Prescott might have against the Secretary or the United States related to the allocation, reallocation, relinquishment or delivery of CAP water.

SEC. 111. MISCELLANEOUS PROVISIONS.

(a) JOINING OF PARTIES.—In the event any party to the Settlement Agreement should file a law suit in any United States district court relating only and directly to the interpretation or enforcement of the Settlement Agreement or this title, naming the United States of America or the Tribe as parties, authorization is hereby granted to join the United States of America or the Tribe, or both, in any such litigation, and any claim by the United States of America or the Tribe to sovereign immunity from such suit is hereby waived. In the event Prescott submits a dispute under the Water Service Agreement to arbitration or seeks review by the United States District Court for the District of Arizona of an arbitration award under the Water Service Agreement, any claim by the Tribe to sovereign immunity from such arbitration or review is hereby waived.

b) NO REIMBURSEMENT.—The United States of America shall make no claims for reimbursement of costs arising out of the implementation of the Settlement Agreement or this title against any lands within the Yavapai-Prescott Indian Reservation, and no assessment shall be made with regard to such costs against such lands.

c) WATER MANAGEMENT.—The Tribe shall establish a ground water management plan for the Reservation which, except to be consistent with the Water Service Agreement, the Settlement Agreement and this title, will be compatible with the ground water management plan in effect for the Prescott Active Management.

108 STAT. 4531
LAWS OF 103rd CONG.—2nd SESS. Oct. 31

Sec. 111

Area and will include an annual information exchange with the Arizona Department of Water Resources. In establishing a ground water management plan pursuant to this section, the Tribe may enter into a Memorandum of Understanding with the Arizona Department of Water Resources for consultation. Notwithstanding any other law, the Tribe may establish a tribal water code, consistent with the above-described water management plan, under which the Tribe will manage, regulate, and control the water resources granted it in the Settlement Act, the Settlement Agreement, and the Water Service Agreement, except that such management, regulation and control shall not authorize any action inconsistent with the trust ownership of the Tribe's water resources.

(d) GAUGING STATION.—The Secretary, acting through the Geological Survey, shall establish, maintain and operate a gauging station at the State Highway 89 bridge across Granite Creek adjacent to the reservation to assist the Tribe and the CVID in allocating the surface flows from Granite Creek as provided in the Settlement Agreement.

SEC. 112. EFFECTIVE DATE.

(a) WAIVERS AND RELEASES.—The waivers and releases required by section 110(b) of this title shall become effective as of the date the Secretary causes to be published in the Federal Register a statement of findings that—

(1)(A) the Secretary has determined that an acceptable party, or parties, have executed contracts for the assignments of the Tribe's CAP contract and the city of Prescott's CAP subcontract, and the proceeds from the assignments have been deposited into the Fund as provided in section 106(d); or

(B) the Secretary has executed contracts for the acquisition of the Tribe's CAP contract and the city of Prescott's CAP subcontract as provided in section 106(d);

(2) the stipulation which is attached to the Settlement Agreement as exhibit 9.5. has been approved in substantially the form of such exhibit no later than December 31, 1995;

(3) the Settlement Agreement has been modified to the extent it is in conflict with this title and has been executed by the Secretary; and

(4) the State of Arizona has appropriated and deposited into the Tribe's trust account $200,000 as required by the Settlement Agreement.

(b) DEADLINE.—If the actions described in paragraphs (1), (2), (3), and (4) of subsection (a) have not occurred by December 31, 1995, any contract between Prescott and the United States entered into pursuant to section 106(d) shall not thereafter be effective, and any funds appropriated by the State of Arizona pursuant to the Settlement Agreement shall be returned by the Tribe to the State of Arizona.

SEC. 113. OTHER CLAIMS.

(a) OTHER TRIBES.—Nothing in the Settlement Agreement or this title shall be construed in any way to quantify or otherwise adversely affect the land and water rights, claims or entitlements to water of any Arizona Indian tribe, band or community, other than the Tribe.

(b) FEDERAL AGENCIES.—Nothing in this title shall be construed to affect the water rights or the water rights claims of any Federal
Title II—Auburn Indian Restoration

Sec. 201. Short Title.
This title may be cited as the "Auburn Indian Restoration Act".

(a) Federal Recognition.—Notwithstanding any other provision of law, Federal recognition is hereby extended to the Tribe. Except as otherwise provided in this title, all laws and regulations of general application to Indians or nations, tribes, or bands of Indians that are not inconsistent with any specific provision of this title shall be applicable to the Tribe and its members.
(b) Restoration of Rights and Privileges.—Except as provided in subsection (d), all rights and privileges of the Tribe and its members under any Federal treaty, Executive order, agreement, or statute, or under any other authority which were diminished or lost under the Act of August 18, 1958 (Public Law 85-671), are hereby restored and the provisions of such Act shall be inapplicable to the Tribe and its members after the date of enactment of this title.
(c) Federal Services and Benefits.—Notwithstanding any other provision of law and without regard to the existence of a reservation, the Tribe and its members shall be eligible, on and after the date of enactment of this title, for all Federal services and benefits furnished to federally recognized Indian tribes or their members. In the case of Federal services available to members of federally recognized Indian tribes residing on a reservation, members of the Tribe residing in the Tribe's service area shall be deemed to be residing on a reservation.
(d) Hunting, Fishing, Trapping, and Water Rights.—Nothing in this title shall expand, reduce, or affect in any manner any hunting, fishing, trapping, gathering, or water right of the Tribe and its members.
(e) Indian Reorganization Act Applicability.—The Act of June 18, 1934 (25 U.S.C. 461 et seq.), shall be applicable to the Tribe and its members.
(f) Certain Rights Not Altered.—Except as specifically provided in this title, nothing in this title shall alter any property right or obligation, any contractual right or obligation, or any obligation for taxes levied.

Sec. 203. Economic Development.
(a) Plan for Economic Development.—The Secretary shall—
(1) enter into negotiations with the governing body of the Tribe with respect to establishing a plan for economic development for the Tribe;
(2) in accordance with this section and not later than 2 years after the adoption of a tribal constitution as provided in section 107, develop such a plan; and
WATER SERVICE AGREEMENT
BETWEEN
YAVAPAI-PRESCHOTT INDIAN TRIBE AND
CITY OF PRESCHOTT
TABLE OF CONTENTS

1.0 RECITALS
2.0 EXISTING AGREEMENTS AND EASEMENTS
3.0 WATER INSTALLATIONS AND EASEMENTS
4.0 WATER SERVICE
5.0 SHORTAGE PRIORITY
6.0 SEWER SERVICE
7.0 EFFLUENT SERVICE
8.0 PERFORMANCE AND DEFAULT
9.0 FINANCIAL PROVISIONS
10.0 MISCELLANEOUS

EXHIBITS

1.1 PREVIOUS TRIBE-CITY AGREEMENTS
1.2 INSTRUMENTS CONCERNING RESERVATION WATER AND SEWER LINES
AGREEMENT

THIS AGREEMENT, dated as of ____________, 1995, is entered into by and between the Yavapai-Prescott Indian Tribe and the City of Prescott.

1.0 RECITALS

1.1 The Yavapai-Prescott Indian Tribe, hereinafter the "Tribe", and the City of Prescott, hereinafter the "City", have previously entered into certain agreements which provide for the extension of sewer and water lines and the furnishing of water service and sewer disposal service to the Yavapai-Prescott Indian Reservation, hereinafter the "Reservation". A list of these agreements is attached as Exhibit 1.1 to this Agreement.

1.2 The Tribe, the City and the Secretary of the Interior of the United States of America, hereinafter the "Secretary", are parties to certain other instruments which provide for the installation, maintenance and repair of certain water and sewer lines on the Reservation. A list of these instruments is attached as Exhibit 1.2 to this Agreement.


1.4 Pursuant to the Act, the Tribe, the City and other parties are authorized to enter into a Yavapai-Prescott Indian Tribe Water Rights Settlement Agreement, hereinafter the "Settlement Agreement." Subparagraphs 5.1 and 5.3 of the Settlement Agreement ratify and incorporate the terms of this Agreement.
1.5 The Tribe and the City desire to enter into this Agreement to provide for water, sewer and effluent service to the Reservation.

NOW, THEREFORE, in consideration of the premises and of the promises and agreement hereinafter set forth, the parties hereto agree as follows:

2.0 EXISTING AGREEMENTS AND EASEMENTS

2.1 The previous agreements listed in Exhibit 1.1 are superseded by the terms of this Agreement unless expressly stated otherwise herein.

2.2 The grants of easements and rights-of-way listed in Exhibit 1.2 are hereby ratified and approved, with the exception of that portion of the easement listed in paragraph B of Exhibit 1.2 which was abandoned pursuant to the 1980 Agreement between the Tribe and the City, as well as any other easements or portions thereof, if any, which have been amended, modified or relinquished pursuant to previous agreements between the Tribe and the City. All easements and rights-of-way listed in Exhibit 1.2 are subject to the rental payments, terms and conditions contained in the granting instruments, all applicable laws and regulations and the provisions of subparagraph 2.6.

2.3 Paragraphs 1 and 2 of the First Amendment to the 1980 Water and Sewer Agreement (described in paragraph I of Exhibit 1.1), which provide for the payment of an annual rental fee for the easement described in paragraph G of Exhibit 1.2 and a waiver of claims by the Tribe and the City, remain in full force and effect.
2.4 Nothing in this Agreement shall in any way modify, change
or abrogate any rights of the Tribe or its members under those
provisions of the documents described in paragraph F of Exhibit 1.2
and paragraphs F and H of Exhibit 1.1 which provide for the domestic
water service for Tribal members through one meter, for payment for
water and sewer service by the Tribe on behalf of its members to the
City, and for the ownership of certain residential installations.
2.5 The Tribe hereby waives any rights which it may enjoy under
paragraph 2 of the deed of easement described in paragraph C of
Exhibit 1.2 to receive sewer service from the City without cost and
make unlimited connections to the City sewer system.
2.6 No existing main, line, pumping station or other
installation on or across the Reservation, or any easement or right-
of-way associated therewith, may be conveyed by the City to a third
party without the Tribe’s written consent; provided, however, that the
Tribe hereby grants its consent for such a conveyance from the City
to a regional water authority or other public entity which has taxing
and/or regulatory powers and has at least one Tribal nominee serving
on its governing board; and provided further that any property so
conveyed would be subject to the terms of this subparagraph and all
other applicable terms of this Agreement and any granting instruments.
No existing main, line, pumping station or other installation on or
across the Reservation may be removed by the City without the Tribe’s
written consent; provided, however, that the Tribe shall not
unreasonably withhold its consent to the City’s removal of an
installation that was not financed, constructed or acquired by the
Tribe, Reservation users or a Federal agency or other party on behalf of the Tribe if removal of the installation would not adversely affect the delivery of water or sewer service to the Tribe or any user located on the Reservation. In the event of abandonment of any existing easement, right-of-way or installation on or across the Reservation, the provisions of subparagraph 3.4 shall apply. In the circumstances described in subparagraph 8.5, all existing installations on or across the Reservation designed or used to provide water, effluent or sewer service to Reservation users, and any easements and rights-of-way associated therewith, shall revert to the Tribe in the manner provided by subparagraph 3.5; provided, however, that existing installations and associated easements and rights-of-way which provide or were designed to provide service to both Reservation users and non-Reservation users shall, in such circumstances, be jointly owned and operated by the Tribe and the City or its assignee. The provisions of this subparagraph shall also apply to all mains, lines, pumping stations and other installations, and all easements and rights-of-way associated therewith, which are located off the Reservation and were financed, constructed or acquired by the Tribe, Reservation users or a Federal agency or other party on behalf of the Tribe.

2.7 Should the future residential, commercial, industrial or other economic development on the Reservation necessitate the upgrade or enlargement of an existing installation on or across the Reservation and, due to limitations in the original grant of easement, a new easement is required for the upgraded or enlarged installation,
the provisions of subparagraph 3.7 shall apply. Should future development outside the Reservation necessitate the upgrade or enlargement of an existing installation on or across the Reservation and, due to limitations in the original grant of easement, a new easement is required for the upgraded or enlarged installation, the provisions of subparagraph 3.6(B) shall apply; provided, however, that, subject to the Secretary’s discretion, the fair market value of the new easement shall be offset by the fair market value of the previous easement and by any direct benefits accruing to the Tribe by virtue of the upgrade or enlargement of the installation or by the Tribe’s actual use of City easements pursuant to subparagraph 3.8(A).

If the upgrade or enlargement of an existing installation does not require a new easement, the City shall not be required to pay any additional amount to the Tribe for making the upgrade or enlargement within the original easement. If the upgraded or enlarged installation is situated at the same location as the previous installation, the new easement shall be considered "adjacent and parallel" to the previous easement for purposes of subparagraph 3.6(B).

3.0 WATER INSTALLATIONS AND EASEMENTS

3.1 The Tribe agrees to pay for and install (or have paid for and installed by Reservation users) upon the Reservation all water and sewer mains, lines, pumping stations and other installations required in connection with the development of the Reservation and used solely by Reservation water or sewer users, in accordance with plans and specifications to be prepared by the Tribe’s registered engineers (or
the registered engineers of a Reservation user) pursuant to City standards and subject to approval by the City. Upon satisfactory completion of such installations, the City's Environmental Services Director or his designee shall notify the Tribe (or the Reservation user) in writing that such installations are thereby accepted. Should any disagreement arise between the Tribe (or the Reservation user) and the City with regard to the engineering, construction or installation of such installations, the Tribe's engineer (or the Reservation user's engineer) and the City Environmental Services Director shall agree upon a third engineer within ten (10) calendar days after such disagreement and the decision of such third engineer shall be final and shall be made within fifteen (15) calendar days after selection of such third engineer. Should the Tribe's engineer (or the Reservation user's engineer) and the City Environmental Services Director fail to agree on the selection of a third engineer pursuant to this section, the matter in disagreement shall be subject to arbitration pursuant to paragraph 8.2.

3.2 Following acceptance by the City Environmental Services Director, such installations shall become the property of the City, free and clear of any and all encumbrances, claims or liens whatsoever for use thereof by the City, and the Tribe (or the Reservation user) shall execute and deliver to the City a bill of sale evidencing the transfer of title to such installations, subject to the provisions of subparagraphs 3.3, 3.4 and 3.5. The Tribe also agrees to approve the grant by the Secretary to the City of any easement or right-of-way on or across the Reservation required for the extension of water and
sewer installations to service the development of the Reservation, and hereby grants a license to the City to enter upon existing Reservation streets and roads to repair and maintain such installations.

3.3 Upon acceptance by the City of mains, lines, pumping stations and other installations constructed by the Tribe (or the Reservation user), and easements and rights-of-way associated therewith, for residential, commercial or industrial development on the Reservation, the City agrees in connection therewith to:

A. Retain title to the installations, easements and rights-of-way for not less than ninety-nine (99) years, subject to the provisions of subparagraphs 3.4 and 3.5, and thereafter to not convey title to a third party without the written consent of the Tribe; provided, however, that the City may convey the installations, easements and rights-of-way to a regional water authority or other public entity which has taxing and/or regulatory powers and has at least one Tribal nominee serving on its governing board; and provided further that all installations, easements and rights-of-way so conveyed would be subject to the terms of this subparagraph 3.3, subparagraphs 3.4 and 3.5, and all other applicable terms of this Agreement and any granting instruments.

B. Not remove said installations from the Reservation realty without the written consent of the Tribe.

C. At the expense of the City, to maintain the installations adequately to service residential, commercial and industrial enterprises on the Reservation.
D. Not encumber any such installations or related easements or rights-of-way.

3.4 The City shall be deemed to have abandoned an easement if the mains, lines, pumping stations or other installations (the "installations") located within such easement are not used to provide water or sewer service for a continuous period of one year. Upon such abandonment, the following provisions shall apply:

A. The City, upon written request by the Tribe, shall execute and deliver to the Tribe an instrument in form and substance reasonably satisfactory to the Tribe terminating the easement. Such instrument shall be suitable for recording with the Yavapai County Recorder so as to give notice of such termination in the official records of Yavapai County.

B. If the installations located within such easement were paid for by the Tribe, Reservation users or a Federal agency or other party on behalf of the Tribe, such installations shall become the property of the Tribe, free and clear of any and all encumbrances, claims or liens whatsoever, and the City, upon written request by the Tribe, shall execute and deliver to the Tribe a bill of sale or other instrument in form and substance reasonably satisfactory to the Tribe evidencing the transfer of title of such installations to the Tribe.

C. If the installations located within such easement were not paid for by the Tribe, Reservation users or a Federal agency or other party on behalf of the Tribe, the City, subject to subparagraph 3.4(D), shall have one year from the date of its receipt of the request referred to in subparagraph 3.4(A) to remove such
installations and may enter upon the easement property to effect such removal. At the expiration of such one year period any such installations not removed shall become the property of the Tribe, free and clear of any and all encumbrances, claims or liens whatsoever, and the City, upon written request by the Tribe, shall execute and deliver to the Tribe a bill of sale or other instrument in form and substance reasonably satisfactory to the Tribe evidencing the transfer of title of such unremoved installations to the Tribe.

D. Notwithstanding subparagraph 3.4(C), the City may not remove any installations if doing so would adversely affect the delivery of water or sewer service to the Tribe or any user located on the Reservation.

3.5 In the circumstances described in subparagraph 8.5, all installations, easements and rights-of-way conveyed to the City pursuant to subparagraph 3.2 shall become the property of the Tribe, free and clear of any and all encumbrances, claims or liens whatsoever, and the City shall, upon written request by the Tribe, execute and deliver to the Tribe a bill of sale and/or deed evidencing the transfer of title to such installations, easements and rights-of-way.

3.6 Nothing contained in this paragraph 3.0 or this Agreement shall be construed to require the Tribe, Reservation users or a Federal agency or other party on behalf of the Tribe to:

A. Pay for, install or upgrade any main, line, pumping station or other installation which serves any user outside the
Reservation, or pay for, install or upgrade any off-Reservation main, line, pumping station or other installation.

B. Approve the grant of any easement or right-of-way on or across the Reservation for any main, line, pumping station or other installation which serves any user outside the Reservation; provided, however, that the Tribe agrees to use its best efforts in assisting the City in obtaining such additional easements or rights-of-way adjacent and parallel to existing easements or rights-of-way across the Reservation for fair market value. Said fair market value is to be offset by any direct benefits accruing to the Tribe by virtue of the operation of the installation or by the Tribe's actual use of City easements pursuant to subparagraph 3.8(A). At the City's option, payment for additional easements and rights-of-way pursuant to this subparagraph may be made in one payment for the present value of the easement throughout the term thereof. All easements and rights of way remain subject to the Secretary's discretion in granting such easements or rights-of-way, the requirements of Federal law and such non-compensatory terms and conditions as are applicable to the adjacent easement or right-of-way. Nothing contained in this subparagraph or this Agreement shall be construed to require the Tribe to approve the grant of any easement which is not adjacent and parallel to any existing easement or right-of-way or is inconsistent with existing or planned Reservation use or occupancy. All easements granted pursuant to this subparagraph, and the installations associated therewith, shall be subject to the provisions of subparagraph 2.6.
C. Grant or convey to the City any water or sewer installations, or approve the grant by the Secretary to the City of any easements or rights-of-way associated therewith, which are not connected to the City's water or sewer systems.

D. Grant or convey to the City the right to use any mains, lines, pumping stations or other installations, or any easements or rights-of-way associated therewith, which were financed, constructed or acquired by the Tribe or by a Federal agency or other party on behalf of the Tribe, to service any user outside the Reservation without the Tribe's written consent; provided, however, that if the Tribe and the Secretary approve of or grant such use by the City, and determine that such use would not adversely impact the Tribe, the Tribe hereby agrees that such use of such installations, easements or rights-of-way shall be without payment of compensation, subject to the Secretary's discretion; and provided further that nothing contained in this subparagraph 3.6(D) or this Agreement shall be construed to require the Tribe to approve the grant of any easement or extension of an easement which is not adjacent and parallel to any existing easement or right-of-way or is inconsistent with existing or planned Reservation use or occupancy. Unless the Tribe agrees otherwise in writing, City use of installations, easements or rights-of-way pursuant to this subparagraph shall in no manner affect the reversion of such installations, easements or rights-of-way to sole Tribal ownership pursuant to subparagraphs 2.6, 3.4 and 3.5 in the circumstances described in those subparagraphs.
E. Grant or convey to the City any water or sewer installations, or approve the grant by the Secretary to the City of any easements or rights-of-way, after City water and sewer service to the Tribe and Reservation users has terminated pursuant to subparagraph 8.5.

3.7 Should the future residential, commercial, industrial or other economic development on the Reservation necessitate, in whole or in part, an expansion of the City's water or sewer installations or water or sewer plant capacity, the Tribe agrees to approve the grant by the Secretary to the City of any future easements or rights-of-way across the Reservation for such required installations without payment of compensation, subject to the Secretary's discretion in granting such easements or rights-of-way, the requirements of Federal law and such non-compensatory terms and conditions as are applicable to an adjacent easement or right-of-way; provided, however, that nothing contained in this subparagraph or this Agreement shall be construed to require the Tribe to approve the grant of any easement which is not adjacent and parallel to any existing easement or right-of-way or is inconsistent with existing or planned Reservation use or occupancy. All easements granted pursuant to this subparagraph, and the installations associated therewith, shall be subject to the provisions of subparagraph 2.6.

3.8 To the extent it is necessary or desirable to the Tribe to construct, operate and maintain off-Reservation mains, lines, pumping stations or other installations to enjoy its rights pursuant to paragraph 7.0 or, in the circumstances described in subparagraph 8.5,
pursuant to the Type 2 Grandfathered Groundwater Rights or equivalent thereof, as set forth in subparagraph 8.4(C) of this Agreement and subparagraph 5.4 of the Settlement Agreement, the City agrees:

A. To grant the Tribe the right to the non-exclusive use of new or existing City easements or rights-of-way for Tribal installations without payment of compensation, where such joint use is not inconsistent with the terms of such easements or rights-of-way and is not inconsistent with existing or planned use of the easements or rights-of-way. In the event the City grants the Tribe such a right, the City shall receive a credit against any payment obligations the City may owe to the Tribe for new or existing easements or rights-of-way across the Reservation in an amount equal to the adjusted value of any such right granted to the Tribe pursuant to the preceding sentence. In determining such adjusted value, the value of the Tribe’s actual use of City easements or rights-of-way pursuant to this subparagraph 3.8(A) shall be determined and then shall be adjusted downward by the value of the City’s actual use of installations which do not serve Reservation users exclusively and which were financed, constructed or acquired by the Tribe or by a Federal agency or other party on behalf of the Tribe, or easements or rights-of-way on the Reservation, pursuant to subparagraph 3.6(D).

B. When joint use of City easements or rights-of-way pursuant to subparagraph 3.8(A) is not possible, to use its best efforts in assisting the Tribe in obtaining additional easements or rights-of-way adjacent and parallel to existing City easements or rights-of-way for fair market value.
4.0 WATER SERVICE

4.1 The City agrees to allow the Tribe (and Reservation water users) to make such connections, extensions or additions to water installations which presently exist upon or adjacent to the Reservation or are hereafter constructed upon or adjacent to the Reservation as may be deemed necessary or desirable by the Tribe for the purpose of providing water service to the Tribe and existing and future Reservation water users.

4.2 Subject to the granting of any necessary easement or right-of-way pursuant to subparagraph 3.2 or 3.7, the City agrees to provide and furnish water for all residential uses on the Reservation through distribution facilities which are of sufficient capacity to provide, and do provide, such minimum demand flows, flow durations, residual pressures at each fire-fighting point of service, static pressure ranges and regulated maximum pressures under normal operating conditions as are required for the residential uses and associated water uses (including fire-fighting) and are consistent with the standards of the City for service within city limits and the professional standards of the Insurance Service Organization or comparable entity; provided, however, that the City distribution facilities shall be of sufficient capacity to provide, and do provide, a minimum demand flow for residential uses of at least one thousand (1000) gallons per minute with a residual pressure of twenty (20) pounds per square inch at each fire-fighting point of service and a static pressure range of fifty (50) pounds of pressure per square inch to one hundred (100) pounds of pressure per square inch at each point.
of consumption, with the highest pressure regulated to a maximum of
one hundred (100) pounds of pressure per square inch at each point of
consumption under normal operating conditions; and provided further
that nothing contained herein shall be construed to create any City
liability for inability to provide the capacities, flows, flow
durations or pressures set forth herein for Reservation water uses due
solely and proximately to a design or construction defect in
installations constructed by the Tribe or Reservation water user
pursuant to paragraph 3.1.

4.3 Subject to the granting of any necessary easement or right-
of-way pursuant to subparagraph 3.2 or 3.7, the City agrees to provide
and furnish water for all industrial or commercial uses on the
Reservation (including multi-family residential structures) through
distribution facilities which are of sufficient capacity to provide,
and do provide, such minimum demand flows, flow durations, residual
pressures at each fire-fighting point of service, static pressure
ranges and regulated maximum pressures under normal operating
conditions as are required for the industrial and commercial uses and
associated water uses (including fire-fighting) and are consistent
with the standards of the City for service within city limits and the
professional standards of the Insurance Service Organization or
comparable entity; provided, however, that the City distribution
facilities shall be of sufficient capacity to provide, and do provide,
a minimum demand flow for industrial and commercial uses of at least
two thousand five hundred (2500) gallons per minute with a residual
pressure of fifty (50) pounds per square inch at each fire-fighting
point of service and a static pressure range of fifty (50) pounds of pressure per square inch to one hundred (100) pounds of pressure per square inch at each point of consumption, with the highest pressure regulated to a maximum of one hundred (100) pounds of pressure per square inch at each point of consumption under normal operating conditions; and provided further that nothing contained herein shall be construed to create any City liability for inability to provide the capacities, flows, flow durations or pressures set forth herein for Reservation water uses due solely and proximately to a design or construction defect in installations constructed by the Tribe or Reservation water user pursuant to paragraph 3.1.

4.4 If the Tribe determines in good faith that the residential, industrial or commercial development within the Reservation results in the need for expanded water plant or distribution facilities to provide surplus water flows (i.e., unusual capacity, flow or pressure demands which are in excess of the standard residential, industrial and commercial water requirements referenced in subparagraphs 4.2 and 4.3), the City shall use all diligent efforts to enlarge or expand such plant and distribution facilities within the City's service area in order to provide such surplus flows; provided, however, that the City may require the Reservation water user or users requiring the surplus flows to pay the costs of providing such surplus flows.

4.5 All water delivered by the City pursuant to this paragraph 4.0 shall meet or exceed all applicable water quality standards established by the Arizona Department of Environmental Quality and all other agencies having jurisdiction.
4.6 Nothing contained in this paragraph 4.0 or this Agreement shall be construed to:

A. Prohibit the Tribe from owning, constructing, operating or maintaining a separate Reservation water system which is not connected to the City’s water system.

B. Prohibit the City and Tribe from jointly owning, constructing, operating or maintaining water service installations or systems for Reservation water use or for integrated on-Reservation and off-Reservation water use.

C. Prohibit the Tribe from withdrawing and using groundwater pursuant to the Settlement Agreement, or diverting and using surface water pursuant to the Settlement Agreement.

D. Except with respect to on-Reservation facilities exclusively serving Reservation water users, require the Tribe (or Reservation water users) to pay for, install or upgrade any City facilities needed to provide the standard capacities, flows, flow durations or pressures provided for in subparagraphs 4.2 and 4.3.

5.0 SHORTAGE PRIORITY

5.1 The City agrees that, in the event of a water shortage which would otherwise result in the reduction or curtailment of water deliveries to Reservation users pursuant to subparagraph 5.2, residential, commercial and industrial users located upon the Reservation shall have an absolute prior right, during any year in which there is such a shortage, over any other user of water supplied by the City, either inside or outside the corporate limits of the City, to the first five hundred and fifty (550) acre-feet per annum
of water supplied by the City. During such times as this absolute priority is exercised by the Tribe to prevent reduced or curtailed water deliveries pursuant to subparagraph 5.2, the City may elect, after receiving the Tribe's permission, to divert from Granite Creek a quantity of water equivalent to the absolute priority water delivered to the Reservation, said diversions being in lieu of diversion by the Tribe of a corresponding portion of the Tribe's Granite Creek rights as described in the Settlement Agreement and subject to the same restrictions applicable to diversions by the Tribe under Subparagraph 6.2 thereof. Among Reservation users, the Tribe shall determine delivery priorities of this water and so notify the City.

5.2 With the exception of the Tribe's absolute priority water described in subparagraph 5.1, during times of shortage, the remainder of the water delivered through the City's water distribution system may be reduced or curtailed to such classes of users as the City may determine from time to time, subject to the following restrictions. The next to last class of users to which water deliveries may be reduced or curtailed shall consist of all commercial or industrial users located within the boundaries of the City and the Reservation. The last class of users to which water deliveries may be reduced or curtailed shall consist of all residential or domestic users located within the boundaries of the City and the Reservation, on the same basis. For purposes of this paragraph, the Tribe's governmental offices shall be considered a residential or domestic user. Within each user class as set forth in this paragraph, the reductions in
water delivery shall be on a proportional basis, based upon each user's average water consumption over the prior twelve (12) months, as it relates to the total amount of water delivered to members of the class through the City's water delivery system during the same time period.

5.3 The Tribe shall adopt a water conservation code designed to limit per capita residential water use on the Reservation during times of shortage which are comparable to the average per capita residential water use during times of shortage within that portion of the City's water service area which lies outside the boundaries of the Reservation. The Tribal water conservation code shall also implement conservation measures during times of shortage for Reservation commercial and industrial water users which are comparable to the conservation measures applicable during times of shortage to commercial and industrial water users within that portion of the City's water service area which lies outside the boundaries of the Reservation. Nothing in this subparagraph 5.3 shall be deemed to limit or otherwise affect in any manner the rights of Reservation water users under subparagraphs 5.1 and 5.2 or any other applicable provision of this Agreement.

6.0 SEWER SERVICE

6.1 Subject to any total or partial moratorium on new sewer connections as set forth in subparagraph 6.2, the City agrees to allow the Tribe (and Reservation sewer users) to make such connections, extensions or additions to sewer installations which presently exist upon or adjacent to the Reservation or are hereafter constructed upon

-19-
or adjacent to the Reservation as may be deemed necessary or desirable by the Tribe for the purpose of providing sewer service to existing and future Reservation sewer users.

6.2 If the rate of development upon the Reservation or within the service area of the City, as the term is defined in subparagraph 6.3, results in the need for expanded sewer treatment or collection and outfall facilities, the City shall use all diligent efforts to obtain the necessary financing for such expansion, so as to expedite development on the Reservation; provided, however, that if the City is temporarily unable to construct such expanded sewer treatment or collection or outfall facilities because of (a) fiscal restraints during the first fiscal year in which construction of expanded facilities is required or (b) refusal of participating agencies, such as the Environmental Protection Agency, to grant necessary financing, and should the City be required to impose a moratorium on future sewer connections or collection and outfall facilities by the Environmental Protection Agency, the Arizona Department of Environmental Quality, or any other appropriate agency with jurisdiction, such moratorium shall apply equally to all future sewer connections or collection and outfall facilities, without regard to whether the proposed development is located within that portion of the City's sewer service area which lies outside the boundaries of the Reservation, or that portion of the City's sewer service area which encompasses the Reservation. If the imposition of a moratorium does not result in outright prohibition of future sewer connections, but imposes a limitation on the number thereof, the permitted number of future sewer connections shall be
allocated equitably between development on the Reservation and
development within that portion of the City's service area outside the
Reservation.

6.3 With respect to the need for construction of expanded sewer
treatment or collection and outfall facilities, or the use of existing
sewer treatment, collection or outfall facilities, the City shall not
establish any development priorities, whether fiscal or otherwise,
between development within that portion of the City's service area
which lies outside the boundaries of the Reservation and development
within that portion of the City's sewer service area which encompasses
the Reservation, and the City shall not discriminate in any manner
between sewer connections on the Reservation and those outside the
Reservation; provided, however, that nothing contained in this
subparagraph 6.3 shall prohibit the City from establishing development
priorities (including, but not limited to, priorities for sewer
connections) that favor development on the Reservation and within the
incorporated limits of the City over development in other areas to
which the City provides water or sewer service. For purposes of this
subparagraph and subparagraph 6.2, the service area of the City shall
include (1) the area within the territorial boundaries of the City and
(2) any additional area in which the City serves domestic, commercial
and industrial users or owns water or sewer mains, lines and booster
facilities with which to provide such service.

6.4 Subject to any total or partial moratorium on sewer
connections as set forth in subparagraph 6.2, and subject to the
granting of any necessary easement or right-of-way pursuant to
subparagraph 3.2 or 3.7, the City agrees to allow connection of all
future residential, commercial or industrial development on the
Reservation to the City sewer system and to accept and treat to the
extent required by law all domestic, commercial and industrial sewage
and wastewater arising from all existing development on the
Reservation and any and all future development on the Reservation,
delivered to the City sewer system from the Reservation. All
Reservation discharges to the City sewer system shall conform to the
pretreatment standards applicable to similar non-Reservation
discharges into the City sewer system.

6.5 Except with respect to on-Reservation facilities exclusively
serving Reservation sewer users, nothing in this paragraph 6.0 or this
Agreement shall be construed to require the Tribe (or Reservation
sewer users) to pay for, install or upgrade any City facilities needed
to provide the sewer service provided for in this paragraph 6.0.

7.0 EFFLUENT SERVICE

7.1 All effluent generated on the Reservation shall be
considered the property of the Tribe until such time as it leaves the
Reservation in City installations and is excess to Tribe’s
requirements for effluent use or conveyance pursuant to subparagraph
7.2, has been conveyed by the Tribe or City to a third party user, or
loses its character as effluent. At the Tribe’s option, Reservation
effluent may be delivered to the City for treatment and subsequent use
or sale by the Tribe pursuant to subparagraph 7.2 or captured and used
or sold by the Tribe pursuant to subparagraph 7.3. If neither used
nor sold by the Tribe pursuant to subparagraphs 7.2 or 7.3, effluent
generated on the Reservation shall be the City's property for
disposition as it pleases.

7.2 The City agrees to allow the Tribe and/or its agents to make
such connections, extensions or additions to effluent installations
which presently exist or are hereafter constructed as may be deemed
necessary or desirable by the Tribe for the purpose of using the
effluent generated on the Reservation; provided, however, that such
connections, extensions or additions to effluent installations will
not adversely affect such installations and will be subject to the
City's approval, such approval to not be unreasonably withheld; and
provided further that the cost of constructing, operating and
maintaining such connections, extensions or additions shall be borne
solely by the Tribe and/or its agents. The Tribe shall have an
absolute first priority for all effluent produced from the treatment
of Reservation sewage or wastewater at City treatment facilities, and
may direct the delivery of such effluent through such connections,
extensions or additions to Reservation effluent users, third-party
purchasers of Reservation effluent, or a combination thereof. Unless
agreed otherwise by the City, such deliveries may not exceed the rate
at which Reservation sewage is generated and treated at City treatment
facilities, said rate to be determined by multiplying the average
daily gallon quantity of water delivered to Reservation users during
the previous month by the system-wide percentage of sewage generation
to water deliveries or, at the Tribe's option, by the Tribe and/or its
agents installing, operating and maintaining at their cost adequate
measuring devices for determining the actual rate of sewage generation
by Reservation users. The Tribe and/or its agents shall be solely responsible for obtaining and paying the costs for any necessary regulatory permits or approvals for use of the effluent; provided, however, that the City shall cooperate with and support the Tribe and/or its agents in obtaining any such permits and approvals. Use of effluent pursuant to this subparagraph 7.2 and this Agreement shall not require a more stringent level of sewage or wastewater treatment by the City than is otherwise effected by City treatment facilities.

7.3 The Tribe may, at its option, construct, operate and maintain a separate effluent collection, treatment and distribution system for the use and/or sale of Reservation effluent. To the extent that existing sewer or effluent installations were constructed with Tribal funds (or with federal or private funds where the federal agency or private party involved does not object to a reconveyance pursuant to this subparagraph and the installations were built to provide sewer or effluent service only to Reservation users or off-Reservation purchasers of Tribal effluent), the Tribe may request and the City shall execute a reconveyance or deed to the Tribe of such installations and associated easements and rights-of-way free and clear of any and all encumbrances, claims or liens whatsoever in the manner provided by subparagraphs 3.4 and 3.5; provided, however, that the Tribe shall at its expense perform all acts necessary to disconnect such installations from the City's installations, subject to the approval of the City Environmental Services Director to prevent damage to the City's mains and lines, with review by a third engineer as provided in subparagraph 3.1 in case of dispute; and provided
further that the City shall not be required to reconvey to the Tribe any easements or rights-of-way which are necessary for City installations which are not the subject of the reconveyance.

7.4 All effluent delivered by the City pursuant to this paragraph 7.0 shall meet or exceed all applicable quality standards established by the Arizona Department of Environmental Quality and all other agencies having jurisdiction.

7.5 Nothing contained in this paragraph 7.0 or this Agreement shall be construed to prohibit the City and Tribe from jointly owning, constructing, operating or maintaining effluent installations or systems for Reservation effluent use or for integrated on-Reservation and off-Reservation effluent use.

7.6 Except with respect to on-Reservation facilities exclusively serving Reservation effluent users and off-Reservation facilities exclusively serving users of Reservation effluent designated by the Tribe pursuant to subparagraph 7.2, and except as provided in paragraph 9.0, nothing in this paragraph 7.0 or this Agreement shall be construed to require the Tribe (or users of Reservation effluent) to pay for, install or upgrade any City facilities needed to provide the effluent service provided for in this paragraph 7.0.

8.0 PERFORMANCE AND DEFAULT

8.1 Should either the Tribe or the City determine that the other party has breached or defaulted in the timely performance of any obligation under this Agreement, the aggrieved party shall provide written notice to that effect and the breaching or defaulting party shall have thirty (30) calendar days from the receipt of notice to
cure the breach or default, unless the aggrieved party provides a written extension of this cure period; provided, however, that failure to deliver water at the flows and pressures provided in subparagraphs 4.2 and 4.3 or in accordance with the schedule of priorities provided in paragraph 5.0 must be cured within twenty-four (24) hours of notice, unless the Tribe provides a written extension of this cure period or the City is physically unable to comply with subparagraphs 4.2 and 4.3 or paragraph 5.0 due solely and proximately to an Act of God which the City could not reasonably have prevented, avoided or relieved through foresight or prudence.

8.2 Disputes under this Agreement are subject to arbitration under the rules, regulations and standards of the American Arbitration Association, with review by the United States District Court for the District of Arizona, as provided in Section 10(e) of the Act; provided, however, that the Tribe may, following the cure period provided in subparagraph 8.1, immediately seek equitable relief in United States District Court for the District of Arizona to enforce the provisions of subparagraphs 4.2 and 4.3 or paragraph 5.0; and provided further that the Tribe may commence an action in United States District Court for the District of Arizona seeking a determination pursuant to subparagraph 8.5.1 or 8.5.2 without first submitting the matter to arbitration.

8.3 If the Tribe or the City breaches or defaults in the timely performance of any obligation under this Agreement, the party not in default, to the extent permitted by applicable law, shall be entitled to all damages incurred arising from the breach or default, including
reasonable attorneys' fees and cost of suit, as set by the arbitrator, hearing examiner or court. The parties expressly agree that the rights conferred by this Agreement may be enforced through specific performance. The foregoing shall not in any way limit or restrict any right or remedy at law or equity which would otherwise be available to the party not in breach or default.

8.4 As security for its performance under this Agreement, the City agrees:

A. That it may not assign its obligations under this Agreement without the written consent of the Tribe, and may not sell, lease, create a security interest in, or otherwise dispose of more than fifty (50%) percent of its water-related assets without the written consent of the Tribe; provided, however, that the Tribe hereby grants its consent for such an assignment or disposition from the City to a regional water authority or other public entity which has taxing and/or regulatory powers and has at least one Tribal nominee serving on its governing board; and provided further any property so conveyed would be subject to all applicable terms of this Agreement.

B. That it shall not merge or consolidate with any other entity unless the successor entity assumes all obligations of the City under this Agreement.

C. That it shall hold 3169 acre-feet per annum of Type 2 Grandfathered Groundwater Rights in trust for the Tribe as security for the performance of this Agreement until such time, if ever, that it shall convey such Type 2 Grandfathered Groundwater Rights to the Tribe in the circumstances described in subparagraph 8.5; provided,
however, that, upon any conveyance of the Type 2 Grandfathered Groundwater Rights to the Tribe pursuant to this Agreement, said rights may only be utilized by the Tribe to provide water service to Reservation water users; and provided further that, following any such conveyance, the Tribe shall employ all reasonable efforts to establish a separate entitlement under state law to withdraw groundwater in the Prescott Active Management Area for delivery to and use on the Reservation under equivalent or more favorable terms and conditions (including quantity) as the Type 2 Grandfathered Groundwater Rights, as determined by the Arizona Department of Water Resources or successor agency in consultation with the Secretary, and the Type 2 Grandfathered Groundwater Rights shall be subject to reversion to the City if and when the Tribe establishes such an equivalent, separate entitlement.

8.5 In the following circumstances, the City shall, at the Tribe’s option, execute the conveyances of installations, easements, rights-of-way and Type 2 Grandfathered Groundwater Rights provided for in subparagraphs 2.6, 3.5 and 8.4:

8.5.1 Upon a judicial determination that any one of the following circumstances exists or has occurred:

A. Inability of the City to provide the capacities, flows, flow durations or pressures for Reservation water uses provided for in subparagraph 4.2 and 4.3 such that the reasonable use and enjoyment of the Reservation is adversely impacted.

B. Failure of the City to act diligently or in good faith to provide surplus flows as provided in paragraph 4.4.
C. Inability of the City to provide the Reservation water users with the absolute priority water provided for in subparagraph 5.1, or failure to act in good faith in exercising the schedule of priorities provided for in paragraph 5.0.

8.5.2 With respect to a conveyance of sewer easements and installations only, upon a judicial determination that the City has failed to act diligently or in good faith in expanding sewer system capacity to prevent a total or partial moratorium on Reservation sewer system connections.

8.5.3 Automatically upon cessation or termination of the City's corporate existence, unless the Tribe has agreed in writing otherwise or unless this Agreement has been assumed by a regional water authority or other public entity pursuant to subparagraph 8.4(A).

8.5.4 As a condition to Tribal consent to the City's disposition of water-related assets pursuant to subparagraph 8.4(A) to any entity other than a regional water authority or other public entity as described in that subparagraph.

9.0 FINANCIAL PROVISIONS

9.1 Except as provided in subparagraphs 9.2 and 9.3, hook ups to City water, sewer and/or effluent installations, by Reservation water, sewage and effluent users (and any off-Reservation users of Reservation effluent pursuant to subparagraph 7.2), and water, sewer and effluent service to such users pursuant to paragraphs 4.0, 5.0, 6.0 and 7.0, shall be at the same rate and subject to the same conditions as the rate and conditions imposed upon users who reside within or use water within the corporate limits of the City; provided,
however, that no conditions imposed on Reservation water, sewer and effluent users or off-Reservation users of Reservation effluent shall be inconsistent with the terms of this Agreement.

9.2 Reservation water, sewer and effluent users, and any off-Reservation users of Reservation effluent pursuant to subparagraph 7.2, shall not pay or be liable for any City sales tax, or other form of City tax, for the hook-ups and water, sewer and effluent service set forth in this agreement, and the City hereby agrees to not assess or attempt to collect any taxes from such entities or persons; provided, however, that the City may assess, and the Reservation water, sewer and effluent users and off-Reservation users of Reservation effluent shall pay, a special user fee for hook-ups and water, sewer and effluent service which is hereby agreed to be equal in rate and amount to the taxes prohibited by this subparagraph. The City hereby waives all claims, if any, it may have to assess or collect a City sales tax or equivalent thereof on hook-ups by, or water or sewer service to, Reservation water and sewer users prior to the effective date hereof; provided, however, that nothing contained herein shall obligate the City to refund any sales tax actually paid by Reservation water and sewer users prior to the effective date hereof.

9.3 If the amounts charged by the City (including all charges, hook-up fees, other fees, taxes, assessments and other amounts) throughout its service area for water, sewer or effluent service exceed the City’s costs in providing such service, the amounts charged by the City (including all charges, hook-up fees, special user fees,
other fees, assessments and other amounts) for Reservation water, sewer and effluent service (and service to off-Reservation users of Reservation effluent) shall be limited to the amounts necessary to offset that portion of the City's costs attributable to providing such service. For the purposes of this subparagraph, the "portion of the City's costs attributable to providing such service" shall mean, with respect to each category of water, sewer or effluent service, that percent of the City's total system-wide costs in providing the service (including, but not limited to, City costs in acquiring, constructing, operating, maintaining or expanding the facilities to provide the service) as is determined by the following computation:

\[
\frac{\text{Gallon}}{\text{Quantity of Reservation Service}} \times \frac{\text{City's System-Wide Costs in Providing Service}}{\text{Total Permissible Charge to Reservation (or Reservation Effluent) Users for Service}}
\]

Where a City cost is attributable to more than one category of service, it may be allocated in its entirety to one category or allocated in part to more than one category, as desired by the City, but may not be allocated among categories in a manner such that more than one hundred percent of the cost has been allocated among all categories. Upon request, the City shall provide the Tribe with sufficient information to enable the Tribe to determine whether the provisions of this subparagraph are applicable and, if so, whether the cost limitations of this subparagraph have been implemented.
10.0 MISCELLANEOUS

10.1 The term of this Agreement shall be in perpetuity; provided, however, that the City’s service obligations shall terminate:

A. With respect to water service, upon a conveyance of water installations and Type 2 Grandfathered Groundwater Rights pursuant to subparagraph 8.5.

B. With respect to sewer service or effluent service, upon a conveyance of sewer or effluent installations pursuant to subparagraphs 7.3 or 8.5. In the case of a partial conveyance of such installations, a termination of service obligations pursuant to this subparagraph shall be effective only with respect to those areas of the Reservation served by the conveyed installations.

10.2 Unless expressly stated otherwise, the terms employed in this Agreement shall have the same meaning as is provided by the Settlement Agreement.

10.3 To the extent consistent with the terms of this Agreement and the Settlement Agreement, all Tribal and City laws, rules, rates, regulations and policies which are now in effect or may hereafter be adopted by the City or Tribe shall apply to this Agreement.

10.4 The provisions of this Agreement shall inure to the benefit of, and shall be binding upon, the respective successors and assigns of the parties hereto.

10.5 Each party agrees in good faith to execute such further or additional documents as may be necessary or appropriate to fully carry out the intent and purpose of this Agreement.
10.6 This Agreement shall become effective on the effective date of the Settlement Agreement.

10.7 This Agreement shall be construed in accordance with all applicable laws of the United States of America and the State of Arizona. Nothing contained herein waives the right of the Tribe to object to the jurisdiction of the courts of the State of Arizona to adjudicate any disputes arising under this Agreement.

10.8 The headings of this Agreement are for reference only and shall not limit or define the meaning of any provision of this Agreement.

10.9 This Agreement may be executed in duplicate originals, each of which shall constitute an original Agreement.

10.10 To the extent Section 38-511, Arizona Revised Statutes, is applicable to this Agreement, the City hereby represents that the persons significantly involved in the initiating, negotiating, securing, drafting and creating of this Agreement on behalf of the City are John R. Moffitt, City Attorney, and Brad Huza, Environmental Services Director, and the Tribe hereby represents that neither Mr. Moffitt nor Mr. Huza is or has been, as of the date of execution hereof, an employee or agent of or consultant to the Tribe. The Tribe also hereby covenants to not employ either Mr. Moffitt or Mr. Huza as an employee, agent or consultant for a term of at least three years following the execution hereof.

10.11 Any notice to be given hereunder shall have been properly given or made when received by the office or manager designated herein, or two (2) days after deposit with the United States Postal
Service, certified or registered mail, postage prepaid, addressed as follows:

If to the Tribe:

Yavapai-Prescott Indian Tribe
530 East Merritt Avenue
Prescott, Arizona 86301
Attn: Tribal President

With a copy to:

Steptoe & Johnson
40 North Central Avenue, 24th Floor
Phoenix, Arizona 85004
Attn: David J. Bodney, Esq.

If to the City:

Prescott City Manager
P.O. Box 2059
Prescott, Arizona 86302

With copies to:

Prescott City Attorney
P.O. Box 2059
Prescott, Arizona 86302

City of Prescott
Environmental Services Director
P.O. Box 2059
Prescott, Arizona 86302

or addressed to such other address as the party to receive such notice shall have designated by written notice given as required by this paragraph.

10.12 This Agreement constitutes the entire agreement between the parties and no understandings or obligations not herein expressly set forth shall be binding upon them. This Agreement may not be modified or amended in any manner unless in writing and signed by the parties.
IN WITNESS WHEREOF, the parties hereto have executed the Agreement herein the day and year first above written.

YAVAPAI-PRESCOTT INDIAN TRIBE

By: Stan Rice Jr., President

CITY OF PRESCOTT, a municipal corporation

By: [signature]

, Mayor

Approved:

SECRETARY OF THE INTERIOR

UNITED STATES OF AMERICA

By: [signature]

SOLICITOR

Approved as to Form:

JOHN R. MORRITT, City Attorney

Attest:

MARIE L. WATSON, City Clerk
EXHIBIT 1.1
TO
WATER SERVICE AGREEMENT:
PREVIOUS TRIBE-CITY AGREEMENTS

A. Water Service Agreement dated February 16, 1972, recorded in Book 739, pages 385 through 389, Yavapai County Recorder’s Office, Yavapai County, Arizona, for the extension of a water main and water service for commercial and industrial purposes along approximately 5,600 feet of Yavapai-Prescott Tribal Reservation highway frontage adjacent to Highway 69.

B. Sewer Service Agreement dated March 17, 1972, for the extension of a sewer main and sewage disposal service for commercial and industrial purposes along approximately 5,600 feet of Yavapai-Prescott Tribal Reservation highway frontage adjacent to Highway 69.

C. Supplemental Water and Sewer Service Agreement, dated October 28, 1975, covering the extension of sewer and water distribution lines for commercial and industrial purposes in connection with EDA grant funds Project No. 07-01-01510 to the Yavapai-Prescott Indian Tribe (Jimullah Park).

D. Agreement for Connection to 8" City Water Main on Yavapai-Prescott Indian Reservation and Agreement to Grant Easement for Extension of Main to Highway 69 Right of Way, dated May 16, 1974, between the Yavapai-Prescott Indian Tribe, Yavapai Hills, Inc. and the City of Prescott, recorded in Book 1206, pages 307 through 317, providing for commercial and industrial water service by the City of Prescott to the Yavapai-Prescott Tribal Reservation frontage adjacent to Highway 69.

E. Agreement for Connection to 6" Water Main on Yavapai-Prescott Indian Reservation and Agreement to Grant Easement for Extension of 6" Main Across the Yavapai-Prescott Indian Reservation to the Eastern Boundary of said Reservation, dated December 31, 1974, between the Yavapai-Prescott Indian Tribe, Richard Kruger and the City of Prescott, recorded January 24, 1975, in Book 949, Official Records, pages 33 through 38, Yavapai County Recorder’s Office, Yavapai County, Arizona, providing for water service by the City of Prescott to the Yavapai-Prescott Tribe through the water lines described in such agreement.
F. Memorandum of Agreement Between the United States of America, Yavapai-Prescott Indian Tribe and the City of Prescott, dated March 28, 1975, providing for domestic water service and sewage disposal service for residential homes on the Yavapai-Prescott Indian Reservation.

G. Agreement dated November 20, 1980, between the Yavapai-Prescott Indian Tribe and the City of Prescott, providing for water service and sewage disposal service for the Yavapai-Prescott Indian Reservation and an easement across that Reservation.

H. Memorandum of Agreement Among the United States of America and the Yavapai-Prescott Indian Tribe and the City of Prescott, Arizona, Yavapai County, Arizona pursuant to Public Law 86-121, Project Number PH 84-553, dated August, 1985, providing for the financing, construction and ownership of certain Reservation water and sewer facilities.

I. First Amendment to the 1980 Water and Sewer Agreement dated August 16, 1990, between the Yavapai-Prescott Indian Tribe and the City of Prescott, providing for the valuation of the easement granted in the 1980 Agreement and rental payments on that easement.

J. Memorandum of Agreement dated April 1993 among the Indian Health Service, the Yavapai-Prescott Indian Tribe and the City of Prescott, regarding Project #PH 93-886.
EXHIBIT 1.2
TO
WATER SERVICE AGREEMENT:
INSTRUMENTS CONCERNING
RESERVATION WATER AND SEWER LINES

A. That certain license from the United States of America to
the City of Prescott, for the installation, maintenance,
repair and replacement of a sewer line across a portion of
the Veterans Administration Center Reservation at Whipple,
Arizona, dated February, 1947.

B. A Deed of Easement from the Administrator of Veterans
Affairs acting for and on behalf of the United States of
America to the city of Prescott for the installation,
maintenance, repair and replacement of a 12" outfall sewer
line across a portion of the land of the Veterans
Administration Center Reservation at Whipple, Arizona,
dated May 17, 1955, recorded June 10, 1955, at Book 51,
Official Records, pages 409 through 411, Yavapai County
Recorder's Office, Yavapai County, Arizona.

C. Deed of Easement from the Administrator of Veterans Affairs
acting for and on behalf of the United States of America to
the City of Prescott for the installation, maintenance,
repair and replacement of an 8" water line across a portion
of the land of the Veterans Administration Center
Reservation at Whipple, Arizona, dated February 26, 1953,
recorded March 19, 1953, at Book 13, pages 125 though 126,
Yavapai County Recorder's Office, Yavapai County, Arizona.

D. Grant of Easement for Right of Way from the United States
of America, acting by and through Charles Pitrat,
Superintendent, Truxton Canyon Agency, Bureau of Indian
Affairs, Department of the Interior, the Yavapai-Prescott
Community Association, the City of Prescott, Arizona, and
Yavapai Hills, Inc., for a right of way for the
construction, maintenance, operation and inspection of an
8" water line on the Yavapai-Prescott Reservation frontage
adjacent to Highway 69, dated June 19, 1974, recorded June
26, 1974, at Book 918 of Official Records, pages 551
through 567, Yavapai County Recorder's Office, Yavapai
County, Arizona.

E. Grant of Easement for Right of Way between the United
States of America, acting by and through Charles Pitrat,
Superintendent, Truxton Canyon Agency, Bureau of Indian
Affairs, Department of the Interior, the Yavapai-Prescott
Community Association, the City of Prescott, Arizona, and
Richard Kruger for an easement to the City of Prescott for
the construction, maintenance, operation and repair of a 6" water line across the Yavapai-Prescott Indian Reservation.

F. That certain application for right of way by the City of Prescott for construction of Ruth Street, dated February 14, 1966, and that certain Resolution No. 2-66 of the Yavapai-Prescott Community Association dated May 6, 1966, providing for domestic water service to the Yavapai-Prescott Indian Community through one meter, approved by Charles Pitrat on April 7, 1966, subject to the conditions set forth in Resolution No. 2-66 of the Yavapai-Prescott Community Association.

G. Grant of Easement for Right-of-Way dated December 5, 1980, between the United States of America, acting by and through James A. Barber, Superintendent, Truxton Canyon Agency, and the City of Prescott.
MEMORANDUM OF UNDERSTANDING
BETWEEN THE
YAVAPAI-PRESCOTT INDIAN TRIBE
AND THE
ARIZONA DEPARTMENT OF WATER RESOURCES
IN RE: WATER MANAGEMENT

SECTION 1: PREAMBLE AND GENERAL PROVISIONS

A. PARTIES

The parties to this Memorandum of Understanding are the Yavapai-Prescott Indian Tribe (Tribe), a federally recognized Indian tribe, and the Arizona Department of Water Resources (ADWR), a state agency established pursuant to A.R.S. Section 45-102.

B. FINDINGS


2. The management goal of the Prescott Active Management Area (AMA), is to achieve balance between annual groundwater withdrawals and natural and artificial recharge (safefield) by the year 2025. Under the Arizona Groundwater Code of 1980, the Director of the Department of Water Resources is responsible for management of groundwater in the Prescott AMA and implementation of programs to achieve the safefield goal.

3. The Yavapai-Prescott Indian Tribe Water Rights Settlement Act authorizes the establishment of groundwater management plan for the Reservation which, except as is necessary to be consistent with the Water Service Agreement between the Tribe and the City of Prescott, the Settlement Agreement, and the Settlement Act, will be compatible with the groundwater management plan in effect for the Prescott AMA. The Settlement Act also approves, ratifies, and confirms the Settlement Agreement.

4. Under terms of the Settlement Agreement, the Tribe is to establish a groundwater management plan for the Reservation, as set forth in the Settlement Act, and is to provide for an annual information exchange with the Arizona Department of Water Resources. Also, the Tribe is to enter into a Memorandum of Understanding with the Arizona Department of Water Resources for consultation; and the Tribe may establish a water code, consistent with the Reservation groundwater management plan, under which
the Tribe will manage, regulate, and control the water resources granted it under the Settlement Act, the Settlement Agreement, and the Water Service Agreement.

C. PURPOSE

The purpose of this Memorandum of Understanding is to fulfill relevant requirements of the Settlement Agreement and set forth the principles that will guide the parties in consultation and communication regarding groundwater management and groundwater pumping in the Prescott AMA.

SECTION 2: PRINCIPLES OF AGREEMENT

A. CONSULTATION

During development of a groundwater plan, for the Reservation, and the Tribal water code, or amendments thereto, the Tribe agrees to contact ADWR in a timely fashion to invite ADWR’s consultation and comment. ADWR agrees to meet with the Tribe, as may be requested, to explain ADWR’s management plan, conservation efforts, and regulatory program for the Prescott AMA. ADWR agrees to make available to the Tribe a copy of the ADWR hydrologic model of the Prescott AMA.

B. COMMUNICATION

The parties agree to share, upon request and without charge, any information not protected from public disclosure, regarding groundwater pumping, recharge, surface water diversions, effluent sale and re-use, and effluent discharge. The parties will meet on an annual basis to discuss the format in which information can be exchanged, and the schedule for an annual exchange of such information.

C. DESIGNATED OFFICER

All communication between the parties will, at a minimum, be addressed to the following persons:

ADWR: Director, Department of Water Resources, 500 North Third Street, Phoenix, Arizona 85004-3903

Director, Prescott Active Management Area, 2200 E. Hillsdale, Suite A, Prescott, Arizona 86301

Tribe: President, Yavapai-Prescott Indian Tribe, 530 E. Merritt Avenue, Prescott, Arizona 86301
D. EFFECTIVE DATE AND DURATION

This Memorandum of Understanding shall become effective on the date it is executed by both parties and will remain in effect until terminated, either unilaterally or bilaterally, in writing.

E. AMENDMENT

This Agreement may be amended at any time upon a mutual agreement of both parties. All amendments shall be in writing.

SECTION 3: EXECUTION

Yavapai-Prescott Indian Tribe

By: Stan Rice, Jr, President

[Signature]

4/18/95

Date

Arizona Department of Water Resources

By: Rita P. Pearson, Director

[Signature]

March 23, 1995

Date
WAIVER AND RELEASE OF CLAIMS

(a) Except as provided in paragraph (b) herein, the Yavapai-Prescott Indian Tribe ("Tribe") on behalf of itself and its members and the Secretary of the Interior on behalf of the United States, in consideration of benefits realized under the Yavapai-Prescott Indian Tribe Water Rights Settlement Agreement dated as of July 29, 1995 (hereinafter referred to as the "Settlement Agreement"), and the Water Service Agreement between the Tribe and the City of Prescott (hereinafter referred to as the "Water Service Agreement"), which is incorporated into and made a part of the Settlement Agreement, and in accordance with the commitment under Subparagraph 9.1 of the Settlement Agreement and pursuant to the authorization granted in Section 10(b) of the Yavapai-Prescott Indian Tribe Water Rights Settlement Act of 1994, hereby waives and releases:

(1) Any and all past and present claims of water rights or injuries to water rights (including water rights in groundwater, surface water and effluent) for lands within the Tribe's Reservation, from time immemorial to the date of execution of this Waiver and Release of Claims, which the Tribe and/or its members may have, against the United States, the State of Arizona or any agency or political subdivision thereof, or any other person, corporation or municipal corporation, arising under the laws of the United States or the State of Arizona;
(2) Any and all future claims of rights to water
(including water rights in groundwater, surface water and
effluent) for lands within the Tribe's Reservation, from
and after the date of execution of this Waiver and Release
of Claims, which the Tribe and/or its members may have,
against the United States, the State of Arizona or any
agency or political subdivision thereof, or any other
person, corporation or municipal corporation, arising under
the laws of the United States or the State of Arizona; and

(3) Any and all past, present and future claims of
water rights or injuries to water rights (including water
rights in groundwater, surface water and effluent) for
lands outside of the exterior boundaries of the Tribe's
Reservation for claims based upon aboriginal occupancy,
which the Tribe and/or its members may have, against the
United States, the State of Arizona or any agency or
political subdivision thereof, or any other person,
corporation or municipal corporation, arising under the
laws of the United States or the State of Arizona.

Nothing herein shall prevent the Tribe from participating with other
entities in further activities to augment the water supply available
to the Prescott Active Management Area and Granite Creek watershed,
or shall prevent the Tribe, its members and the United States on their
behalf from supporting any claim of any party to the Settlement
Agreement filed in the Gila River Adjudication from which the Tribe's
water rights under the Settlement Agreement are satisfied. Nothing
herein shall affect the water rights or claims related to any trust allotment located outside the exterior boundaries of the Tribe's Reservation of any member of the Tribe; provided, however, that any water rights determined to exist for such allotments shall not be exercised for use on the Tribe's Reservation.

(b) Notwithstanding the execution by the Tribe of the Waiver and Release of Claims herein, the Tribe, its members, and the United States on their behalf shall retain the right to assert the following claims for lands within the Tribe's Reservation:

(1) Claims for protection and/or enforcement of the Tribe's surface water, groundwater and effluent rights and entitlements as provided for in the Settlement Agreement and Water Service Agreement under the continuing jurisdiction of the Court in the Gila River Adjudication or otherwise.

(2) Claims for the breach or enforcement of the terms of the Settlement Agreement or rights or entitlements recognized in the Settlement Agreement, or for the breach or enforcement of the Water Service Agreement, or rights or entitlements recognized the Water Service Agreement, including claims for future injuries to such rights and entitlements.

(c) Except as provided in Paragraph (2) of this Waiver and Release of Claims, the United States shall not assert any claim against the State of Arizona and any agency or political subdivision thereof or any other person, corporation, or municipal corporation.
in its own right or on behalf of the Tribe and its members based upon
(1) water rights or injuries to water rights of the Tribe and its
members; or (2) water rights or injuries to water rights held by the
United States on behalf of the Tribe and its members.

YAVAPAI-PRESCOTT INDIAN TRIBE

By: Allen Ringle
President

THE UNITED STATES OF AMERICA

By: Carla E. Dee
Assistant Secretary of the Interior for
Indian Affairs

By: Attorney General of the United States
RESOLUTION NO. 95-30
OF THE GOVERNING BODY OF THE
YAVAPAI-PRESCOTT INDIAN TRIBE

WHEREAS, the Yavapai-Prescott Indian Tribe desires to complete
implementation of its Water Settlement pursuant to the
Yavapai-Prescott Indian Tribe Water Settlement Act 1994,
103 P.L. 434 (1994); and

WHEREAS, the Settlement Act requires the Tribe to alienate its
contract for the delivery of Central Arizona Project
Water and to release its Water Rights claims in the Gila
River Adjudication; and

WHEREAS, an acceptable Exchange Agreement providing for exchange
of the Tribe's CAP Rights to the city of Scottsdale for
$540,000 has been negotiated;

NOW, THEREFORE, LET IT BE RESOLVED THAT the Board of Directors
authorizes the President to sign, after receiving final
approval of legal counsel, the Waiver and Release of
Claims attached to the Water Settlement Agreement as
Exhibit 9.1, the Exchange Agreement providing for the
disposition of the Tribe's Central Arizona Project Water
allocation and documents ancillary to the Exchange
Agreement that are necessary to effectuate its purpose.
It is hereby resolved that the Board of Directors
authorizes the President to disclose a copy of this
Resolution to the City of Scottsdale.

CERTIFICATION

I, the undersigned, as President of the Board of Directors for the
Yavapai-Prescott Indian Tribe, hereby certify that the Board is
composed of five (5) members, of whom 3 members, constituting a
quorum, were polled on this 19th day of December, 1995, and that
the foregoing Resolution was adopted by a vote of 3 for, 0
against under the Articles of Association, Article VI.

[Signature]

PRESIDENT, BOARD OF DIRECTORS
YAVAPAI-PRESCOTT INDIAN TRIBE

ATTEST:

[Signature]

SECRETARY, BOARD OF DIRECTORS
YAVAPAI-PRESCOTT INDIAN TRIBE
IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF MARICOPA

IN RE THE GENERAL ADJUDICATION
OF ALL RIGHTS TO USE WATER IN THE
GILA RIVER SYSTEM AND SOURCE

W-1 (Salt)
W-2 (Verde)
W-3 (Upper Gila)
W-4 (San Pedro)
Consolidated

Contested Case No. W1-202
Special Proceedings

JUDGMENT

THIS MATTER COMING before the Court on the application of the Yavapai-
Prescott Indian Tribe ("Tribe") to initiate special proceedings to approve the
proposed settlement of the Tribe's water rights; the settlement and a stipulation
having been entered into by the Tribe, United States of America, State of Arizona,
City of Prescott, and Chino Valley Irrigation District ("CVID"), known collectively as
the "Settling Parties," all of whom are claimants in the Gila River adjudication; the
proposed settlement having been approved, ratified and confirmed by the United
States Congress, see Yavapai-Prescott Indian Tribe Water Rights Settlement Act of
proposed settlement having been referred to the Special Master; the Master's report
having been filed with the Clerk and received by the Court; the Master having
moved the Court for an order approving his report; and the Court having
considered the report and being fully advised;
THE COURT FINDS that notice of the special proceeding and notice of the
Master's report and motion have been given as required by law; all claimants in the
Gila River adjudication have been given an opportunity to review and object to the
proposed settlement; a total of nine objections to the proposed settlement have been
filed; four of these objections have been withdrawn voluntarily; four of these
objections have been properly dismissed for failure to comply with orders of the
Court; the Special Master has recommended the summary disposition of the
remaining objection; and the period for exceptions to the Master's report has passed;

IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

1. The Special Master's motion to approve his report is granted. The
Master's report, including the proposed findings of fact and conclusions of law, is
accepted.

2. The Settling Parties' stipulation, filed with the Court on June 30, 1995,
is approved.

IT IS FURTHER ORDERED adjudicating the Tribe's rights and entitlements to
water as follows:

1. The Tribe shall have the perpetual right to divert, store and use a
portion of CVID's entitlement to Granite Creek surface water as provided in the
settlement agreement, to wit:

Each year, the Tribe shall be entitled to store, divert and use: (a) as its
Minimum Annual Entitlement, fifty (50) percent of the flow of Granite Creek, as
measured at the State Highway 89 bridge across Granite Creek adjacent to the
Reservation, until it has diverted five hundred and fifty (550) acre-feet per year (ac-
ft/yr); provided, however, that if the existing and customary beneficial users of
surface water by CVID pursuant to the rights to Granite Creek surface water are
reduced to an annual entitlement of less than one thousand one hundred (1,100) ac-
ft/yr by a determination of the Court in the Gila River adjudication which is not
subject to further appeal, then the Tribe's Minimum Annual Entitlement shall be reduced by an amount equal to one-half the difference between one thousand one hundred (1,100) ac-ft/yr and CVID's reduced entitlement; and (b) as its Maximum Annual Entitlement, an additional ten (10) percent of that portion of the flow of Granite Creek which exceeds 1,100 ac-ft/yr, as measured at the State Highway 89 bridge across Granite Creek adjacent to the reservation, up to a total combined diversion of one thousand (1,000) ac-ft/yr; provided, however, that if CVID's existing and customary beneficial uses of Granite Creek surface water are reduced by virtue of a determination by the Court in the Gila River adjudication, which is not subject to further appeal, that one or more of such rights is or are invalid, the Tribe's total Maximum Annual Entitlement pursuant to this Subparagraph shall be reduced by the same percentage as the percentage reduction in CVID's use rights.

The priority of storage, diversion and use of surface water by the Tribe shall be the same as the priorities determined by the confirmation of CVID's right to Granite Creek water in the Gila River adjudication. The Tribe's annual entitlement to Granite Creek surface water shall not be carried over from year to year; provided, however, that: (i) any water stored by the Tribe during a given year may be left in storage and/or consumptively used by the Tribe in subsequent years without such storage and/or use being counted against the Tribe's annual entitlements for such subsequent years; (ii) if the flow of Granite Creek is insufficient in any year to permit the Tribe and CVID each to divert five hundred and fifty (550) ac-ft/yr, then an amount equal to the difference between the amount the Tribe actually diverts in that year and its five hundred and fifty (550) ac-ft/yr Minimum Annual Entitlement shall be carried forward from year to year (but not to exceed four years) as a Deficiency until the Tribe is able to recover such Deficiency; and (iii) the Tribe's total Maximum Annual Entitlement shall be increased in any given year by an amount equal to the sum of the Deficiencies carried forward from the preceding four years.
If the Tribe has the right to divert, and does divert, an amount in excess of one thousand (1,000) ac-ft/yr to recover its accumulated deficiencies, then the Tribe’s accumulated Deficiencies shall be reduced by an amount equal to such excess. All such excess diversions shall be applied to the earliest deficiency still being carried forward. Deficiencies older than four years shall lapse.

Chino Valley Irrigation District’s right or entitlement to Granite Creek surface water is defined as that right or entitlement to be adjudicated in these proceedings and based on the various water claims identified in the settlement agreement.

2. In addition to the Tribe’s right to surface water from Granite Creek, the Tribe shall have the permanent right to withdraw all groundwater beneath its reservation for on-reservation beneficial use in accordance with any groundwater management plan which may be developed by the Tribe pursuant to Section 11(c) of the Act. To the extent that groundwater beneath the Tribe’s reservation remains subject to this Court’s adjudication jurisdiction, the Court retains jurisdiction over the groundwater to ensure that the Tribe’s groundwater use complies with Section 111(c) of the Act, the settlement agreement, and this judgment.

3. In addition to its other entitlements to water, the Tribe shall have the right to use on its reservation or sell to off-reservation users, all effluent generated on the reservation.

4. In addition to the entitlements to water established by this judgment, the Tribe has contractual rights to receive water service from other sources. This judgment in no way affects any contractual rights that the Tribe may have (or may acquire in the future) to receive additional water pursuant to contract.

IT IS FURTHER ORDERED dismissing Statements of Claimant Nos. 39-54011 through 39-54023, filed by the United States of America in behalf of the Tribe.

THERE BEING NO JUST REASON FOR DELAY, this partial judgment is properly deemed final pursuant to ARIZ. R. CIV. P. 54(b).
WHEREFORE, the Court directs the entry of judgment, pursuant to the provision of Ariz. R. Civ. P. 54(b).

DATED this 15 day of December 1995.

SUSAN R. BOLTON,  
JUDGE OF THE SUPERIOR COURT

SUSAN R. BOLTON  
Judge of the Superior Court
INTERGOVERNMENTAL AGREEMENT

WHEREAS the City of Prescott (hereinafter referred to as "Prescott") is a municipal corporation of the State of Arizona; and

WHEREAS the Chino Valley Irrigation District (hereinafter referred to as "CVID") is a political subdivision, existing under and by virtue of Title 48, Arizona Revised Statutes; and

WHEREAS Prescott has entered into a Water Rights Settlement Agreement with the Yavapai-Prescott Indian Tribe (hereinafter referred to as the "Tribe"); and

WHEREAS CVID has entered into a Water Rights Settlement Agreement with the Yavapai-Prescott Indian Tribe, conditioned upon an additional agreement being entered into between Prescott and CVID regarding a partial replacement of water which may be diverted by the Tribe from Granite Creek; and

WHEREAS the parties hereto acknowledge that implementation of the Water Rights Settlement Agreement among the parties would be in the best interests of the parties and their constituents; and

WHEREAS the parties are empowered to enter into this Agreement pursuant to ARS § 11-952.

NOW, THEREFORE, in consideration of the covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by each party to the other, it is hereby agreed as follows:

1. (A) That Prescott shall replace and deliver to CVID fifty percent (50%) of any water actually diverted by the Tribe or the City from Granite Creek in accordance with the Water Rights Settlement Agreement; provided, however, that the City’s obligation hereunder shall not exceed a total of two hundred seventy-five (275) acre feet per year; and further provided that the water so replaced shall be either recovered recharged water, if available, or effluent, at Prescott’s option.

   (B) That the foregoing water or effluent will be subject to the following terms and conditions:

      i. That CVID shall provide Prescott with a minimum of two (2) business days’ notice for its need for said replacement water or effluent; and

      ii. That in no event shall Prescott be obligated to deliver more than 1200 gallons per minute at any one time during the months of April, May and June, nor to deliver more than 600 gallons per minute at any one time during the months of July through October; and

      iii. That the obligations of Prescott as set forth
in the foregoing subsection shall constitute the aggregate delivery rate of all water and/or effluent which Prescott is obligated to furnish to CVID pursuant to all existing Intergovernmental Agreements with CVID, and shall not be in addition to any pre-existing obligations regarding the rate of delivery of water and/or effluent to CVID.

iv. That Prescott’s obligation to "deliver" to CVID, as contemplated by this Agreement, shall only obligate Prescott to deliver effluent or recharged water to CVID’s ditch located in the Northwest Quarter of the Northwest Quarter of Section 30, T15N, R1W, GSRB&M.

2. So far as CVID is concerned, Prescott shall be entitled to, and CVID shall make available to Prescott, water, subject to the provisions of Paragraph 6 herein, and in accordance with the following provisions: Prescott will apply for and be granted a permit by the Arizona Department of Water Resources, pursuant to ARS § 45-151 et seq., to appropriate the unappropriated flood waters of Granite Creek. Said water will be diverted and stored under a permit issued pursuant to ARS § 45-831.01 at Prescott’s underground storage facility (Permit No. 71-519567), or such other storage facility as may be approved by the Arizona Department of Water Resources. Recovery of the stored water will be for the purpose of providing replacement water to CVID under Paragraph 1 above. The right of Prescott to divert water from Granite Creek as described herein shall be permitted only when both of the following two conditions occur simultaneously, and the City of Prescott has received notice thereof:

(A) When CVID or Prescott has been notified by the Salt River Valley Users’ Association (hereinafter "SRP") the existing storage capacity of the reservoir system operated by SRP upon the Verde River is filled and spill over Granite Reef Dam from flow of the Verde River is imminent (as opposed to water spilled over Granite Reef Dam as a result of the inflow of water below the Association’s reservoir system on the Verde River or as a result of water originating from the Salt River), and

(B) When the storage capacity of Watson Lake and Willow Creek Reservoir is filled and spill over CVID’s Granite Creek Diversion Dam is imminent.

3. That in exercising the rights granted under Paragraph 2, Prescott shall be entitled to utilize the CVID canal system during the period December 1 through March 31. That during the period April 1 through November 30 (the irrigating season), Prescott shall only be entitled to utilize the CVID canal system if there is available capacity within said system to do so. Whenever the two conditions referred to in Paragraph 2 exist during the irrigating season, CVID shall notify Prescott within two (2) business days whenever sufficient canal capacity available for Prescott to exercise its rights pursuant to Paragraph 2.
4. That in exercising the rights granted under Paragraph 2, Prescott shall also be entitled to divert the flows in Granite Creek (downstream from the confluence of Granite Creek and Willow Creek) for recharge purposes, and CVID shall not object to said diversion.

5. That notwithstanding anything to the contrary, CVID shall retain all rights to use, maintain and store within both Watson Lake and Willow Lake at their full capacities as provided by law and subject to the terms and conditions as set forth in that certain judgment entered in Salt River Valley Water Users' Association vs. Chino Valley Irrigation District on November 22, 1971, Yavapai County Superior Court Cause Number 22088.

6. That it is expressly understood and agreed between the parties that any rights granted to Prescott pursuant to this Agreement are subject to applicable regulatory approval (including but not limited to the Department of Water Resources), and further subject to any restrictions regarding the use of said waters as more particularly set forth in that certain judgment entered in Salt River Valley Water Users' Association v. Chino Valley Irrigation District on November 22, 1971, Yavapai County Superior Court Cause Number 22088.

7. That Prescott shall be solely responsible for any and all costs associated with the construction of any diversion lines or canals to Prescott's recharge facility, which may be required to implement this Agreement.

8. That Prescott shall be solely responsible for any and all costs associated with the actual recharging of water pursuant to this Agreement.

9. That Prescott shall be responsible for maintenance of the CVID canal system being used by Prescott and the CVID earthen diversion dam solely during those periods when Prescott is preparing to use or making actual use of the foregoing; provided, however, that this paragraph shall not obligate Prescott to undertake any major repairs or capital improvements or repairs to CVID property or facilities.

10. That Prescott shall be responsible for obtaining any recharge or other permits which may be required by any governmental or regulatory agency to implement this Agreement.

11. That CVID shall be solely responsible for any and all power and other costs associated with recovering recharged water which may be required to implement this Agreement, but this paragraph shall not obligate CVID to undertake any major repairs or capital improvements or repairs to Prescott property or facilities.

12. That in the event that the events set forth in Paragraph 2 above occur, and CVID prohibits or otherwise intentionally frustrates or hinders Prescott's ability to utilize water for
recharge purposes, then and in that event Prescott’s obligations as set forth in Paragraph 1 above shall be reduced accordingly; for every acre foot of water not recharged, Prescott’s obligation shall be reduced by one acre foot; provided, however, that in the event that Prescott is unable to divert water pursuant to this Agreement due to no fault of CVID, CVID shall not be deemed in breach of this Agreement, provided that CVID undertakes diligent efforts to complete any necessary repairs or maintenance in a timely fashion to enable Prescott the rights granted herein.

13. That Prescott shall be solely responsible for any and all costs associated with the construction, placement and maintenance of a gauging device in order to determine the offsets to which Prescott may be entitled under Paragraph 12 above; and further provided that CVID shall allow Prescott access to CVID property for construction, placement and maintenance of said gauging device.

14. That this Agreement is subject to CVID approving the Water Rights Settlement Agreement among CVID, Prescott and the Tribe, and approval of the Water Rights Settlement Agreement by the Adjudication Court.

15. That the cancellation provisions of ARS § 38-511 apply to this Agreement.

PASSED, APPROVED AND ADOPTED by the Mayor and Council of the City of Prescott this 30 day of May, 1995.

DAITON RUTKOWSKI, Mayor

ATTEST:

MARIE L WATSON
City Clerk

APPROVED
BY THE COUNCIL
City Clerk
Date 5/30/95
Res. No. 2781
PASSED, APPROVED AND ADOPTED by the Board of Directors of the Chino Valley Irrigation District this 30 day of May, 1995.

BOB DAVIS, Chairman of the Board

ATTEST:

Clerk of the Board

Pursuant to A.R.S. Section 11-952(D), the foregoing agreement has been reviewed by the undersigned attorney for the City of Prescott, who has determined that the agreement is in proper form and is within the powers and authority granted under the laws of this State to the City of Prescott.

JOHN R. MOFFITT
City Attorney

Pursuant to A.R.S. Section 11-952(D), the foregoing agreement has been reviewed by the undersigned attorney for the Chino Valley Irrigation District, who has determined that the agreement is in proper form and is within the powers and authority granted under the laws of this State to the District.

THELTON D. BECK
Board Attorney
RESOLUTION NO. 2781

A RESOLUTION OF THE MAYOR AND COUNCIL OF THE CITY OF PRESCOTT, YAVAPAI COUNTY, ARIZONA, AUTHORIZING THE CITY OF PRESCOTT TO ENTER INTO AN INTERGOVERNMENTAL AGREEMENT WITH THE CHINO VALLEY IRRIGATION DISTRICT REGARDING THE RECHARGE OF EXCESS WATERS AND PARTIAL REPLACEMENT OF CVID WATER TO BE PROVIDED TO THE YAVAPAI-PRESCOTT INDIAN TRIBE, AND AUTHORIZING THE MAYOR AND STAFF TO TAKE ANY AND ALL STEPS NECESSARY TO ACCOMPLISH THE ABOVE.

WHEREAS, the City of Prescott has entered into a Water Rights Settlement Agreement with the Yavapai-Prescott Indian Tribe (hereinafter referred to as the "Tribe"); and

WHEREAS, CVID has entered into a Water Rights Settlement Agreement with the Yavapai-Prescott Indian Tribe, conditioned upon an additional agreement being entered into between Prescott and CVID regarding a partial replacement of water which may be diverted by the Tribe from Granite Creek; and

WHEREAS, the parties hereto acknowledge that implementation of the Water Rights Settlement Agreement among the parties would be in the best interests of the parties and their constituents; and

WHEREAS, from time to time the Chino Valley Irrigation District has water available to it which is not needed by said District; and

WHEREAS, the City of Prescott operates a recharge facility, which may utilize a portion of the foregoing waters; and

WHEREAS, it would be to the benefit of the citizens of Prescott and the users of the Chino Valley Irrigation District for the City of Prescott to be able to utilize waters not otherwise needed for recharge purposes.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF PRESCOTT AS FOLLOWS:

SECTION 1. THAT, the City of Prescott hereby approves the Intergovernmental Agreement with the Chino Valley Irrigation District for the recharge of excess waters and partial replacement of CVID water to be provided to the Yavapai-Prescott Indian Tribe, attached hereto as Exhibit "A"/
Resolution No. 2781 - continued

SECTION 2. THAT, the Mayor and Staff are hereby authorized to execute the attached Intergovernmental Agreement and to take any and all steps deemed necessary to accomplish the above.

PASSED, APPROVED and ADOPTED by the Mayor and Council of the City of Prescott, Arizona, on this 30th day of MAY, 1995.

DAITON RUTKOWSKI, Mayor

ATTEST:

MARIE L. WATSON, City Clerk

APPROVED AS TO FORM:

JOHN R. MOFFATT, City Attorney
AGREEMENT BETWEEN THE YAVAPAI-PRESCOTT INDIAN TRIBE, THE UNITED STATES OF AMERICA AND THE CITY OF SCOTTSDALE FOR THE EXCHANGE OF CENTRAL ARIZONA PROJECT WATER
AGREEMENT

THIS AGREEMENT, dated as of December 29, 1995, is entered into by the Yavapai-Prescott Indian Tribe, a tribe of Yavapai Indians duly recognized by the Secretary of the United States Department of the Interior (the "Tribe"), the United States of America, acting through the Secretary of the Interior (the "United States") and the City of Scottsdale, an Arizona municipal corporation ("Scottsdale").

1.0 RECITALS

1.1 In 1968, Congress provided a means for the water-short communities located in the upstream portions of the Salt and Verde River watersheds, to which water from the Central Arizona Project ("CAP") could not be directly delivered, to nonetheless benefit from the construction of the CAP by providing the exchange language set forth in Section 304(d) of the Colorado River Basin Project Act of 1968, 43 U.S.C. § 1524(d).


1.3 In 1980, the Tribe and the United States, acting through the Secretary of the Interior, entered into a CAP water service contract for the delivery of 500 acre-feet of Indian project water per year from the Central Arizona Project. That contract, entitled "Central Arizona Project Indian Water Delivery Contract Between the United States and the Yavapai-Prescott Tribe" (the "Contract") was executed on December 11, 1980, and amended on December 29, 1995.
1.4 At the time that the Tribe was allocated its CAP allocation, that allocation was deemed to be necessary to allow the Tribe to continue to exist and develop. At that time, it was the intention of the Tribe to either exchange that CAP allocation for water from the Verde River, or else construct an aqueduct to carry CAP water into the Tribe’s Reservation. There now are environmental concerns regarding utilization of water from the Verde River. The cost of constructing a delivery system from the CAP aqueduct to the Tribe’s Reservation, as well as the excessive cost of pumping exchange water, has been determined to be financially unsound. The Tribe now has a CAP Contract that it cannot afford to utilize.

1.5 The Tribe is entitled to water-supply benefits of the CAP, as evidenced by the exchange provisions in the Colorado River Basin Project Act. In accordance with the Yavapai-Prescott Indian Tribe Water Settlement Act of 1994, P.L. 103-434, 108 Stat. 452 (1994) (the "Act"), the Tribe wishes to assign the Tribe’s CAP Contract to Scottsdale in exchange for payment to be made into a trust fund established pursuant to § 106(a) of the Act, to be used by the Tribe for the exclusive purpose of defraying its water service costs and/or to develop and maintain facilities for on-Reservation water or effluent use.

1.6 Scottsdale has limited water resources, which are insufficient to provide a long term renewable water supply for all future development within its water service area. Scottsdale
wishes to increase its long-term renewable water supply by accepting an assignment of the Contract from the Tribe.

NOW, THEREFORE, in consideration of the premises and of the promises and agreements herein set forth, the parties hereto agree as follows:

2.0 DEFINITIONS

This Agreement shall employ abbreviated terms which will have meanings as stated below.

2.1 "Amendment" shall mean the agreement among the United States, CAWCD, and Scottsdale which amends the Scottsdale Subcontract in the form attached hereto as Exhibit "C" or a substantially similar agreement which increases Scottsdale's annual subcontract entitlement by an amount that includes the 500 acre feet of water assigned by the Tribe pursuant to the Assignment.

2.2 "Assignment" shall mean the agreement among the Tribe and Scottsdale in the form attached hereto as Exhibit "A".


2.4 "CAP" shall mean the Central Arizona Project, a reclamation project constructed by the United States pursuant to the Colorado River Basin Project Act, 43 U.S.C. §§ 1501 et seq.

2.5 "CAP Master Repayment Contract" shall mean the Contract between the United States and CAWCD for Delivery of Water and Repayment of Costs of the Central Arizona Project dated December 1, 1988 (Contract No. 14-06-W-245, Amendment No. 1).
2.6 "CAP Water Service Contract" shall mean that CAP Indian Water Delivery Contract executed December 11, 1980, between the Yavapai-Prescott Indian Tribe and the United States, as amended, for the delivery of CAP water.

2.7 "CAWCD" shall mean the Central Arizona Water Conservation District, a water conservation district organized under the laws of Arizona, with its principal place of business in Phoenix, Arizona.

2.8 "Contracting Officer" shall mean the Secretary of the Interior of the United States or his duly authorized representative.

2.9 "The Fund" shall mean the Verde River Basin Water Fund, which fund is to be established pursuant to § 105 of the Act.

2.10 "The Interim Payment Agreement" shall mean the agreement executed among the Tribe, the United States, Prescott and Scottsdale on December 29, 1995, concerning the deposit of monies into the Verde River Basin Water Fund.

2.11 "Scottsdale Subcontract" shall mean the CAP water service subcontract among the United States, CAWCD and Scottsdale, Subcontract No. 5-07-30-W0063.

2.12 "Validation Date" shall mean the date on which a Validation Order is issued from which no further appeal is possible.

2.13 "Validation Order" shall mean an order, decree or judgment, issued by a court of competent jurisdiction pursuant to A.R.S. §§ 48-3731 -- 48-3734, that the Amendment is valid and binding upon and enforceable against Scottsdale.
3.0 SUBSIDIARY AGREEMENTS

This Agreement includes as exhibits additional and subsidiary documents in the form of assignment(s) and contract amendments, which are attached hereto and incorporated herein as Exhibits A, B and C.

4.0 OBLIGATIONS OF THE TRIBE

4.1 Contemporaneously with its execution of this Agreement, the Tribe shall execute the Assignment of its CAP Water Service Contract as amended, and all related documents.

4.2 The Tribe shall establish a trust account for the administration of monies paid to it from the Fund pursuant to § 106(d) of the Act, and shall enter into a contract with the Secretary of the Interior which shall expressly require the refund to Scottsdale of monies deposited into the Fund pursuant to § 5.3 of this Agreement if Scottsdale is entitled to such a refund pursuant to § 7.3 of this Agreement.

4.3 Any and all monies received by the Tribe pursuant to this Agreement may only be used for the purposes set forth in § 107(b) of the Act, and shall be consistent with the provisions of § 111(c) of the Act. In developing facilities for on-Reservation water or effluent use with monies released pursuant to the Act, the parties hereto expressly agree that the expenditure of trust monies shall not constitute an expenditure of federal funds, exercise of federal authority, or other form of federal action affecting the environment.
4.4 The Tribe indemnifies and holds harmless Scottsdale from any liabilities resulting from the Tribe’s use and expenditure of monies deposited into the Fund pursuant to section 5.3 hereof.

5.0 OBLIGATIONS OF SCOTTSDALE

5.1 Contemporaneously with its execution of this Agreement, Scottsdale shall execute the Assignment. Subsequent to its execution of this Agreement, Scottsdale shall execute the Amendment whereby the Scottsdale Subcontract will be amended to increase Scottsdale’s CAP entitlement by an amount that includes the 500 acre-feet per year from the Tribe. Within ten (10) days of the execution of the Amendment by all parties thereto, Scottsdale shall file and prosecute in a court of competent jurisdiction an action for validation of the Amendment until a final decision that is not subject to further appeal has been rendered. Scottsdale shall provide the Arizona Department of Water Resources ("ADWR") with written notice of the action for validation upon its filing and of all subsequent proceedings as they occur.

5.2 Scottsdale indemnifies and holds harmless the Tribe and the United States for any liabilities resulting from or relating to Scottsdale’s obligations under its amended CAP subcontract or the use of water obtained therefrom pursuant to the assignment.

5.3 Scottsdale shall cause to be deposited into The Fund the sum of $540,000.00 no later than December 29, 1995.
6.0 **OBLIGATIONS OF THE UNITED STATES**

6.1 The United States shall, contemporaneously with its execution of this Agreement, execute the Amendment and approve the Assignment.

7.0 **EFFECTIVE DATES**

7.1 This Agreement shall be binding and effective against the parties hereto only upon the execution of the Agreement by all of the parties hereto.

7.2 Neither the Assignment nor the Amendment shall be effective until the Validation Date.

7.3 If a court of competent jurisdiction denies validation of the Amendment and no further appeal is possible, or if the return of monies to Scottsdale is triggered under the Interim Payment Agreement, the rights and obligations of the parties pursuant to this Agreement shall be null and void, the Assignment and the Amendment described herein shall be of no further force or validity and any monies placed in the Fund pursuant to Paragraph 5.3 hereof or that have been transferred to the Tribe shall be returned to Scottsdale.

8.0 **NOTICES**

8.1 Any notice or other communication with respect to this Agreement shall be in writing and shall be effective only if sent by personal delivery, or by United States registered or certified mail, return receipt requested, postage prepaid, or by Federal Express or similar generally-recognized overnight carrier regularly providing proof of delivery, addressed to the parties at the
respective addresses set forth opposite their names below, or at
such other address or addresses as they may have theretofore
specified by written notice delivered in accordance herewith.

If to the Tribe:

Yavapai-Prescott Indian Tribe  
530 Merritt Avenue  
Prescott, Arizona 86301-2038  
Attention: Tribal Business Manager  
Tribal Board of Directors

If to Scottsdale:

City of Scottsdale  
Water Resources Dept.  
9388 San Salvador  
Scottsdale, AZ 85258  
Attention: Roger Klingler

If to the United States:

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

If to the State of Arizona:

Rita P. Pearson  
Director of Water Resources  
500 N. 3rd St.  
Phoenix, AZ 85004

Any notice or communication given or served by personal delivery
shall be deemed given or served upon receipt. Any notice or
communication so given or served by mail shall be deemed to have
been given or served as of the date of delivery (whether accepted
or refused) established by the U.S. Postal Service return receipt
or the overnight carrier’s proof of delivery, as the case may be.
9.0 MISCELLANEOUS

9.1 To the extent Section 38-511, Arizona Revised Statutes, is applicable to this Agreement, Scottsdale hereby represents that the persons significantly involved in the initiating, negotiating, securing, drafting and creating of this Agreement on behalf of Scottsdale are Roger Klingler and Barbara Goldberg, and the Tribe hereby represents that none of the above-listed persons is or has been, as of the date of execution hereof, an employee or agent of or consultant to the Tribe. The Tribe also hereby covenant to not employ any of the above-listed persons as an employee, agent or consultant for a term of at least three years following the execution hereof.

9.2 The headings of this Agreement are for reference only and shall not limit or define the meaning of any provision of this Agreement.

9.3 This Agreement may be executed in duplicate originals, each of which shall constitute an original Agreement.

9.4 The provisions of this Agreement shall inure to the benefit of, and shall be binding upon, the respective successors and assigns of the parties hereto, provided, however, that ADWR shall be given notice and opportunity to consult and review the creation of successors and assigns created by operation of law or otherwise.

9.5 Each party agrees in good faith to execute such further or additional documents as may be necessary or appropriate to fully carry out the intent and purpose of this Agreement. This Agreement
may not be modified or amended in any manner unless in writing and
signed by all parties hereto, which amendments shall be subject to
prior consultation and review by ADWR.

9.6 This Agreement shall be construed in accordance with all
applicable laws of the United States and the State of Arizona.

9.7 If any action is brought by any party or parties to this
Agreement against the Tribe or Scottsdale with respect to its or
their rights under this Agreement, the provisions of §§ 110
and 111(a) of the Act shall apply and the Tribe and Scottsdale each
waive the defense of sovereign immunity for purposes of such
action.

9.8 The parties also agree that this Agreement is a contract
under 28 U.S.C. § 1346 and is entered into pursuant to Federal
Reclamation Law and is subject to the waiver of sovereign immunity

IN WITNESS WHEREOF, the parties hereto have executed the
Agreement herein on the date and year written below.

YAVAPAII-PRESCTT INDIAN TRIBE, a
Tribe of Yavapai Indians duly recognized
by the Secretary of the United States
Department of the Interior

By: Stan Rice, Jr.
President

Date: ___________________________
CITY OF SCOTTSDALE, an Arizona municipal corporation

By: [Signature]
Herbert R. Drinkwater
Mayor

Date: 12/27/95

Attest:

[Signature]
Sonia Robertson, City Clerk

Approved as to form:

[Signature]
Barbara L. Goldberg
City Attorney
LEGAL REVIEW AND APPROVAL:

Field Solicitor

Dated: 9/16/96

THE UNITED STATES OF AMERICA, acting through the Secretary of Interior.

By: [Signature]

Agreement No. 950159
ASSIGNMENT OF RIGHTS AND ASSUMPTION
OF OBLIGATIONS OF CENTRAL ARIZONA PROJECT
WATER CONTRACT

THIS ASSIGNMENT is made and entered into this 27th day of September, 1996, by and between the Yavapai-Prescott Indian Tribe, a tribe of Yavapai Indians duly recognized by the Secretary of the United States Department of the Interior (the "Tribe") and the City of Scottsdale, a municipal corporation of the State of Arizona ("Scottsdale").

Recitals

WHEREAS, the Tribe and the United States of America (the "United States"), acting through the Secretary of the Interior have entered into a Central Arizona Project ("CAP") water service contract for annual delivery of 500 acre-feet of CAP water, entitled "Central Arizona Project Indian Water Delivery Contract Between the United States and the Yavapai-Prescott Tribe," executed on December 11, 1980 and amended December 27, 1995 (the "Contract"); and

WHEREAS, the Tribe has agreed to assign its right, title and interest in the Contract to Scottsdale pursuant to a written agreement dated December 29, 1995 among the Tribe, Scottsdale and the United States (the "Exchange Agreement").

WHEREAS, Article 8.7 of the Contract provides that the provisions of the Contract shall apply to and bind the successors and assigns of the parties to the Contract, but that no assignment of any portion of, or interest in, the Contract will be valid until approved by the United States;
NOW, THEREFORE, in consideration of the foregoing, the parties hereto agree as follows:

1. The Tribe hereby assigns, transfers and conveys to Scottsdale all of its rights, title, interest and obligations under the Contract.

2. Scottsdale hereby accepts the assignment of the Tribe’s CAP Water Service Contract as amended.

3. This Assignment shall not become effective until all of the following events have occurred:

   (a) This Assignment has been executed by the Tribe and Scottsdale, the attached Approval has been executed by the United States and this Assignment and related documents have been submitted to ADWR for review as provided by law;
   (b) Scottsdale, the United States and CAWCD have executed an amendment to the Scottsdale CAP Subcontract which increases Scottsdale’s annual subcontract entitlement by an amount which shall include the 500 acre-feet assigned by the Tribe by this Assignment;
   (c) The amendment of the Scottsdale CAP Subcontract has been validated by a court of competent jurisdiction and such court has entered a final decree adjudging the amendment to be valid and binding upon and enforceable against Scottsdale and no further appeal of that decision is possible;
   (d) The Tribe has received payment of $540,000.00 from the Verde River Basin Water Fund pursuant to the Exchange

4. Upon the effectiveness of this Assignment, the Contract shall be extinguished and have no further force or effect.

IN WITNESS WHEREOF, the parties hereto have executed this Assignment the day and year first above-written.

YAVAPAI-PREScott INDIAN TRIBE, a Tribe of Yavapai Indians duly recognized by the Secretary of the United States Department of the Interior

By: ____________________________
    Stan Rice, Jr.
    President

Date: ____________________________

CITY OF SCOTTSDALE, an Arizona municipal corporation

By: ____________________________
    Herbert R. Drinkwater
    Mayor

Date: 12/27/95

Attest:

Sonia Robertson, City Clerk

Approved as to form:

Barbara R. Goldberg
City Attorney
APPROVAL

The undersigned, pursuant to Article 8.7 of the Contract, on behalf of the United States of America, acting through the Secretary of the Interior, hereby approves the foregoing Assignment in accordance with its terms.

The United States shall release the Tribe from its obligations under the Contract, upon the date that the foregoing Assignment becomes effective according to its terms.

Legal Review and Approval

By: ________________________________
    Field Solicitor
    Phoenix, Arizona

THE UNITED STATES OF AMERICA

By: ________________________________
    Regional Director
    Lower Colorado Region
    Bureau of Reclamation
EXHIBIT B
UNITED STATES
DEPARTMENT OF THE INTERIOR
OFFICE OF THE SECRETARY

AMENDATORY AND SUPPLEMENTAL CENTRAL ARIZONA PROJECT
WATER DELIVERY CONTRACT BETWEEN
THE UNITED STATES AND THE YAVAPAI-PRESCOTT INDIAN TRIBE
# UNITED STATES

DEPARTMENT OF THE INTERIOR

OFFICE OF THE SECRETARY

AMENDATORY AND SUPPLEMENTAL CENTRAL ARIZONA PROJECT

WATER DELIVERY CONTRACT BETWEEN

THE UNITED STATES AND THE YAVAPAI-PRESCOTT INDIAN TRIBE

<table>
<thead>
<tr>
<th>Article</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>PREAMBLE</td>
<td>1</td>
</tr>
<tr>
<td>2.</td>
<td>EXPLANATORY RECITALS</td>
<td>2</td>
</tr>
<tr>
<td>3.</td>
<td>CONTRACT PURPOSE</td>
<td>3</td>
</tr>
<tr>
<td>4.</td>
<td>AMENDMENT OF AND SUPPLEMENT TO CAP WATER DELIVERY CONTRACT</td>
<td>3</td>
</tr>
<tr>
<td>5.</td>
<td>TERMINATION</td>
<td>5</td>
</tr>
</tbody>
</table>

Signature Page. | 6
UNITED STATES
DEPARTMENT OF THE INTERIOR
OFFICE OF THE SECRETARY

AMENDATORY AND SUPPLEMENTAL CENTRAL ARIZONA PROJECT
WATER DELIVERY CONTRACT BETWEEN
THE UNITED STATES AND THE YAVAPAI-PRESCOTT INDIAN TRIBE

PREAMBLE

1. THIS AMENDATORY AND SUPPLEMENTAL CONTRACT, made this 27th day of
   December 1995, in pursuance of the Act of June 17, 1902 (32 Stat. 388), and acts amendatory thereof
   and supplementary thereto, and particularly the Boulder Canyon Project Act of December 21, 1928 (45
   Stat. 1057), the Colorado River Basin Project Act of September 30, 1968 (82 Stat. 885), the Yavapai-
   Prescott Indian Tribe Water Rights Settlement Act of October 31, 1994 (108 Stat. 4526), and the various
   authorities and responsibilities of the Secretary of the Interior, hereinafter referred to as the “Secretary,”
   in relation to Indian Tribes as contained in Title 25 USC and 43 USC §1557, is between the UNITED
   STATES OF AMERICA hereinafter referred to as the “United States” and the YAVAPAI-PRESCOTT
   INDIAN TRIBE, hereinafter referred to as the “Contractor”, located on the Yavapai-Prescott
   Reservation, Arizona.

WITNESSETH, THAT:
EXPLANATORY RECITALS

2. WHEREAS, the Colorado River Basin Project Act provides, among other things, that the Secretary shall construct, operate, and maintain the Central Arizona Project, hereinafter "CAP," for the purpose of furnishing irrigation water and municipal water supplies to the water-deficient areas of Arizona and western New Mexico and for other purposes; and

WHEREAS, on December 11, 1980, the United States and the Contractor entered into a contract entitled "Central Arizona Project Indian Water Delivery Contract Between the United States and the Yavapai-Prescott Tribe," hereinafter referred to as the "CAP Water Delivery Contract," whereby the United States agreed to deliver or cause to be delivered up to 500 acre-feet of CAP water per year to the Contractor for tribal homeland purposes; and

WHEREAS, the Yavapai-Prescott Indian Tribe Water Rights Settlement Act of 1994, hereinafter referred to as the "Settlement Act," was enacted, among other things, to provide for resolution of all water rights claims between and among the Contractor, the city of Prescott, the Chino Valley Irrigation District, the State of Arizona, and the United States and to provide the Contractor with long term, reliable water supplies for the orderly development and maintenance of the Contractor's Reservation; and

WHEREAS, §105 of the Settlement Act authorized and directed the Secretary to approve the assignment of the Contractor's CAP water delivery contract to another entity so as to provide funds for deposit into the Verde River Basin Water Fund for the benefit of the Contractor; and

WHEREAS, prior to the assignment of the Contractor's CAP Water Delivery Contract, it is necessary to amend and supplement such contract to provide for use of the Contractor's CAP water off the Tribe's Reservation and to further define the obligation of the Contractor to repay to the United
States the capital costs of the CAP Main System that are properly allocable to the Contractor; and

WHEREAS, both the United States and the Contractor desire to amend and supplement the Contractor’s CAP Water Delivery Contract so as to facilitate the assignment of the Tribe’s CAP water Delivery Contract, as contemplated by the Settlement Act;

NOW, THEREFORE, in consideration of the mutual and dependent covenants herein contained, its is agreed as follows:

CONTRACT PURPOSE

3. The purpose of this contract is to amend and supplement the CAP water Delivery Contract. Except as expressly amended and supplemented herein, the remaining terms and conditions of the CAP Water Delivery Contract shall remain in full force and effect. The defined terms in the CAP Water Delivery Contract shall have the same meaning in this Contract, and shall be capitalized herein to designate their use as defined terms.

AMENDMENT OF AND SUPPLEMENT TO CAP WATER DELIVERY CONTRACT

4. (a) The following new subsection designated as 4.3(e)(3) is hereby added to the CAP Water Delivery Contract:

“4.3(e)(3) Subject to the approval of the Secretary, the Contractor may assign this contract to another entity pursuant to §105 of the Yavapai-Prescott Indian Tribe Water Rights Settlement Act of 1994, and the assigned water may be used off of the Contractor’s Reservation.”

(b) Subsection 6(a) of the CAP Water Delivery Contract is hereby deleted and replaced with the
following:

"6(a)(1) After consultation with the Contractor, the Secretary has determined that the Contractor's allocation of CAP Water will be utilized solely for municipal and industrial purposes. In accordance with Federal Reclamation law, the Contractor is obligated to repay the United States the capital costs of the Main System which are properly allocable to municipal and industrial water use, including interest during construction at a rate of 3.342 percent per annum. Such costs must be repaid, with interest on the unpaid balance at a rate of 3.342 percent per annum, over a period of time beginning with the date that the Contractor puts Project Water to beneficial use or assigns this contract and ending 50 years from January 1 of the year following the year of issuance of the notice of substantial completion for the CAP water supply system, as such system is defined in the December 1, 1988, contract entitled "Contract Between the United States and the Central Arizona Water Conservation District for Delivery of Water and Repayment of Costs of the Central Arizona Project, herein after referred to as the "Master Repayment Contract."

(a)(2) The Secretary has determined that the Contractor’s estimated repayment obligation is $1,061,000. The Secretary will notify the Contractor of its final repayment obligation in writing at such time as the final allocation of Project costs has been completed.

(a)(3) Notwithstanding the obligation of the Contractor to repay all of the Main System costs allocable to the Contractor for municipal and industrial water supply purposes in accordance with subsections (a)(1) and (a)(2) above, the Secretary has determined that the appropriate charge for the Contractor to pay is that charge shown in the schedule below. Payments shall be made in equal semi-annual installments on or before June 1 and December 1 of each year based on a maximum entitlement of 500 acre-feet per each year multiplied by the payment rates set forth in the schedule. The initial semi-annual payment shall be due on or before the June 1 or December 1 following any assignment of the CAP Water Delivery Contract, as hereby amended. The payments will be due
regardless of the quantity of Project Water ordered by or delivered to the Contractor. Receipt of such payments from the Contractor will satisfy in full the obligation of the Contractor to repay the costs of the Main System that are allocable to the Contractor. The United States reserves the right, after consultation with the Contractor, to adjust future payments due under the schedule below in writing based solely on adjustments that are made in the non-Indian municipal and industrial capacity charge by the Central Arizona Water Conservation District under the non-Indian municipal and industrial water service subcontracts to collect sufficient revenues to repay that entity’s repayment obligation to the United States under the Master Repayment Contract.

<table>
<thead>
<tr>
<th>Calendar Year</th>
<th>Payment Due Per Acre-Foot</th>
</tr>
</thead>
<tbody>
<tr>
<td>1996</td>
<td>$30</td>
</tr>
<tr>
<td>1997</td>
<td>39</td>
</tr>
<tr>
<td>1998</td>
<td>48</td>
</tr>
<tr>
<td>1999</td>
<td>48</td>
</tr>
<tr>
<td>2000 through 2043</td>
<td>54</td>
</tr>
</tbody>
</table>

(a)(4) Any capital costs that are not amortized by the foregoing repayment schedule, as it may be adjusted, shall be eliminated in accordance with the authorities provided in 25 U.S.C. §386a and §111(b) of the Yavapai-Prescott Indian Tribe Water Rights Settlement Act (108 Stat. 4531). The amount of capital cost to be eliminated shall be determined in light of the repayment schedule set forth herein, as may be adjusted, and shall be reflected in the cost allocation for the Central Arizona Project.”
IN WITNESS WHEREOF, the Parties hereto have executed this Amendatory and Supplemental Contract the day and year above written.

THE UNITED STATES OF AMERICA

By: __________________________
   Regional Director
   Lower Colorado Region
   Bureau of Reclamation

YAVAPAI-PREScott INDIAN TRIBE

By: __________________________
   President.

By: __________________________
   Secretary
AGREEMENT AMONG THE UNITED STATES,
THE CENTRAL ARIZONA WATER CONSERVATION DISTRICT,
AND THE CITY OF SCOTTSDALE

AMENDMENT NO. 5 TO WATER SERVICE SUBCONTRACT

THIS AGREEMENT is made and entered into this 27th day of September, 1996, by and among the United States of America, hereinafter referred to as the "United States", acting through the Secretary of Interior, the Central Arizona Water Conservation District (the "Contractor"), and the City of Scottsdale (the "Subcontractor").

Recitals

WHEREAS, the United States, the Contractor, and the Subcontractor have entered into a "Subcontract Among the United States, the Central Arizona Water Conservation District, and the City of Scottsdale, Providing for Water Service, Central Arizona Project," Subcontract No. 5-07-30-W0063 (the "Water Service Subcontract"); and

WHEREAS, the City of Prescott ("Prescott") entered into a "Subcontract Among the United States, the Central Arizona Water Conservation District and the City of Prescott, Providing for Water Service, Central Arizona Project," Subcontract No. 6-07-30-W0283 (the "Prescott Subcontract"); and

WHEREAS, pursuant to an agreement among Prescott, the Subcontractor, the Contractor and the United States, Prescott has agreed to assign all right, title and interest in the Prescott Subcontract to the Subcontractor, and Prescott and the Subcontractor have executed an Assignment of Rights and Assumption of Obligations of the Prescott Subcontract; and
WHEREAS, the Yavapai-Prescott Tribe ("Tribe") entered into a "Central Arizona Project Indian Water Delivery Contract Between the United States and the Yavapai-Prescott Tribe"; and

WHEREAS, pursuant to an agreement among the Tribe, the Subcontractor, and the United States, the Tribe has agreed to assign all right, title and interest in its water delivery contract to the Subcontractor, and the Tribe and the Subcontractor have executed an Assignment of Rights and Assumption of Obligations of the Tribe's Central Arizona Project Indian Water Delivery Contract, which has been approved by the United States.

NOW THEREFORE, the parties hereto agree as follows:

1. Amendment No. 4 to Water Service Subcontract No. 5-07-30-W0063, executed on December 8, 1994, is superseded by this Amendment No. 5 to Water Service Subcontract.

2. Definitions. The definitions used in the Water Service Subcontract shall also be applicable to this Agreement. In addition, the term "Tribal Water" shall mean the 500 acre-feet of Central Arizona Project water assigned by the Tribe to the Subcontractor.

3. Amendment of Subarticle 4.12(a). Subarticle 4.12(a) of the Water Service Subcontract is hereby amended to read as follows:

"4.12 Entitlement to Project Water.

(a) For the Year in which the Secretary issues the Notice of Completion of the Water Supply System, the Subcontractor's entitlement to Project Water for M&I uses shall be determined by the Contractor after consultation with the Subcontractor and the Contracting Officer. Commencing with the Year following that in which the Secretary issues the Notice
of Completion of the Water Supply System, the Subcontractor is entitled to take a maximum of 34,203 acre-feet of Project Water for M&I uses including but not limited to ground water recharge."

4. Amendment of Subarticle 5.2(a). Subarticle 5.2(a) of the Water Service Subcontract is hereby amended to read as follows:

"5.2 M&I Water Service Charges

(a) Subject to the provisions of Article 5.4 hereof and in addition to the OM&R payments required in Article 5.1 hereof, the Subcontractor shall, in advance of the delivery of Project M&I Water by the United States or the Operating Agency, make payment to the Contractor in equal semiannual installments of an M&I water service capital charge based on a maximum entitlement of 33,703 acre-feet per year multiplied by the rates set forth in the following schedule.

<table>
<thead>
<tr>
<th>Payment due for each acre-foot of purchased capacity</th>
<th>Payment for the calendar year of</th>
</tr>
</thead>
<tbody>
<tr>
<td>$5</td>
<td>1988-1993</td>
</tr>
<tr>
<td>6</td>
<td>1994</td>
</tr>
<tr>
<td>8</td>
<td>1995</td>
</tr>
<tr>
<td>10</td>
<td>1996</td>
</tr>
<tr>
<td>12</td>
<td>1997</td>
</tr>
<tr>
<td>14</td>
<td>1998</td>
</tr>
<tr>
<td>15</td>
<td>1999</td>
</tr>
<tr>
<td>16</td>
<td>2000</td>
</tr>
<tr>
<td>17</td>
<td>2001</td>
</tr>
<tr>
<td>18</td>
<td>2002</td>
</tr>
<tr>
<td>19</td>
<td>2003</td>
</tr>
<tr>
<td>20</td>
<td>2004</td>
</tr>
<tr>
<td>21</td>
<td>2005</td>
</tr>
<tr>
<td>22</td>
<td>2006</td>
</tr>
<tr>
<td>23</td>
<td>2007</td>
</tr>
<tr>
<td>24</td>
<td>2008</td>
</tr>
<tr>
<td>25</td>
<td>2009</td>
</tr>
<tr>
<td>26</td>
<td>2010</td>
</tr>
<tr>
<td>27</td>
<td>2011</td>
</tr>
<tr>
<td>28</td>
<td>2012</td>
</tr>
<tr>
<td>29</td>
<td>2013</td>
</tr>
<tr>
<td>30</td>
<td>2014</td>
</tr>
<tr>
<td>31</td>
<td>2015</td>
</tr>
<tr>
<td>32</td>
<td>2016</td>
</tr>
<tr>
<td>33</td>
<td>2017</td>
</tr>
<tr>
<td>34</td>
<td>2018</td>
</tr>
<tr>
<td>35</td>
<td>2019</td>
</tr>
<tr>
<td>36</td>
<td>2020</td>
</tr>
<tr>
<td>37</td>
<td>2021</td>
</tr>
</tbody>
</table>
Payment for the calendar year of Payment due for each acre-foot of purchased capacity

2022 38
2023 39
2024 40
2025 - through the end of the term of this subcontract 40

5. Amendment of Subarticle 5.2(c). Subarticle 5.2(c) of the Water Service Subcontract is hereby amended to read as follows:

"(c) On or before the first anniversary date of execution of this subcontract (October 25) and on or before each succeeding anniversary, the Subcontractor shall pay, in addition to all other payments required herein, an M&I subcontract charge. The subcontract charge shall be $2.00 per acre-foot for 33,703 acre-feet of M&I water. Prior to the date of issuance of the Notice of Completion of the Water Supply System, the subcontract charge shall be paid each Year by the Subcontractor to the United States. The Contracting Officer shall advise the Contractor of the amounts and dates of the Subcontractor's payments. After the date of issuance of the Notice of Completion of the Water Supply System, the subcontract charge shall be paid each Year to the Contractor by the Subcontractor and the Contractor shall credit the revenues obtained from the subcontract charge against the Subcontractor's water service charges payable to the Contractor that Year."

6. For the purposes of determining the allocation and repayment of costs of the Central Arizona Project ("CAP") as provided in Article 9.3 of the Contract between the United States and the Central Arizona Water Conservation District for Delivery of Water and Repayment of Costs of the Central Arizona Project, dated December 1, 1988 (Contract No. 14-06-W-245, Amendment No. 1), and any amendment or revision thereof, the costs associated with the delivery of Tribal Water shall be non-reimbursable, and such costs shall be excluded from the Contractor's repayment obligation.
7. For the purposes of determining OM&R costs as provided in Subarticle 5.1 of the Water Service Subcontract, there shall be no distinction made between Tribal Water and other municipal and industrial ("M&I") water delivered pursuant to the Water Service Subcontract.

8. For the purposes of determining priority in case of shortage as provided in Subarticle 4.7 of the Water Service Subcontract, Tribal Water shall be considered Indian, non-irrigation water and shall share a first priority on project water supplies with 510,000 acre-feet of non-Indian M&I water as set forth in the Secretary of the Interior's CAP water allocation decision published in the Federal Register on March 24, 1983.

9. The Subcontractor shall, in advance of the delivery of Tribal Water by the United States or the Operating Agency, make payment to the United States in equal semiannual installments of a Tribal Water service capital charge which shall be computed based on a maximum entitlement of 500 acre-feet per year multiplied by the M&I Water service capital charge rate established pursuant to Subarticle 5.2 of the Water Service Subcontract; Provided, however, that the Tribal Water service capital charge shall not include any portion of the M&I Water service capital charge rate that is not to be used by the Contractor for meeting its repayment obligation to the United States. Such Tribal Water service capital charges shall be payable on or before June 1 and December 1 of each year and shall be applied by the United States against CAP construction costs that are not allocable to the Contractor. The Subcontractor shall not be obligated to pay the Contractor any M&I water
service capital charges or M&I subcontract charges with respect to Tribal Water.

10. Within ten (10) days of the execution of this Agreement by all parties hereto, the Subcontractor shall promptly seek a final decree of the proper court of the State of Arizona decreeing and adjudging this Agreement to be valid and binding upon and enforceable against the Subcontractor. The Subcontractor shall furnish the United States and the Contractor a certified copy of such decree and of all pertinent supporting records. This Agreement shall not become effective until such final decree has been entered and no further appeal of that decree is possible, and until the Contractor has received payment of all amounts owed under the Prescott Subcontract.

11. Except as amended herein, all terms, conditions, and provisions of the Water Service Subcontract shall remain unchanged and in full force and effect.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment No. 5 to Subcontract No. 5-07-30-W-0063 the day and year first above-written.

THE UNITED STATES OF AMERICA

Legal Review and Approval

By:  

Field Solicitor  
Phoenix, Arizona

By:  

Regional Director  
Lower Colorado Region  
Bureau of Reclamation
CENTRAL ARIZONA WATER
CONSERVATION DISTRICT

Attest: ____________________________  By: ____________________________
Secretary

CITY OF SCOTTSDALE

Attest: ____________________________  By: ____________________________
Brea Christ For  Son
City Clerk  Mayor

Approved as to form:

_______________________________
Barbara L. Goldburg
City Attorney
October 18, 1996

Ms. Cathy Wilson  
Bureau of Indian Affairs  
Phoenix Area Office  
Branch of Water Resources Management & Protection  
P. O. Box 10  
Phoenix, AZ  85001

RE: YAVAPAI-PREScott INDIAN TRIBE AND CITY OF PRESCOTT EXCHANGE AGREEMENTS

Dear Ms. Wilson:

As you requested, enclosed for your files are fully executed copies of the above-referenced agreements.

Sincerely,

[Signature]

Ricka M. Gallagher  
Secretary to Barbara R. Goldberg  
Deputy City Attorney

Enclosure
AGREEMENT AMONG THE CITY OF PRESCOTT,
THE CITY OF SCOTTSDALE,
THE CENTRAL ARIZONA WATER CONSERVATION DISTRICT AND
THE UNITED STATES FOR THE
EXCHANGE OF CENTRAL ARIZONA PROJECT WATER
AGREEMENT

THIS AGREEMENT, dated as of September 27, 1994, is entered into by the City of Prescott, an Arizona municipal corporation ("Prescott"), the City of Scottsdale, an Arizona municipal corporation ("Scottsdale"), the Central Arizona Water Conservation District ("CAWCD") and the United States of America, acting through the Secretary of the Interior (the "United States").

1.0 RECITALS

1.1 In 1968 the Arizona Congressional delegation provided a means for the water-short communities located in the upstream portions of the Salt and Verde River watersheds, to which water from the Central Arizona Project ("CAP") could not be directly delivered, to nonetheless benefit from the construction of the CAP by providing the exchange language set forth in Section 304(d) of the Colorado River Basin Project Act of 1968, 43 U.S.C. § 1524(d).


1.3 In 1992 Prescott, the United States and the CAWCD entered into a CAP water service subcontract for the delivery of 7,127 acre-feet of CAP M&I water per year, entitled "Subcontract Among the United States, the Central Arizona Water Conservation District, and the City of Prescott," Subcontract No. 7-07-30-W0283 (the "Prescott Subcontract").

1.4 At the time that Prescott was allocated its CAP allocation, that allocation was deemed to be necessary to allow Prescott to continue to exist and develop. At that time, it was
the intention of Prescott to exchange that CAP allocation for water from the Verde River. However, there are environmental concerns regarding utilization of water from the Verde River.

1.5 Since Prescott was initially designated to have a CAP allocation, litigation was commenced by the State of Arizona with respect to water rights. Subsequently, a number of water claims were filed by the United States on behalf of various Indian tribes, as well as by various Indian tribes themselves, including but not limited to the Yavapai-Prescott Tribe. The net effect of these claims and lawsuits, if successful, could have resulted in the Yavapai-Prescott Tribe being awarded rights to more water than currently exists in the Prescott basin. Consequently, Prescott entered into an agreement with the Chino Valley Irrigation District, the Yavapai-Prescott Indian Tribe, the State of Arizona and the United States, providing for the settlement of all water claims between and among those parties. The United States Congress thereafter enacted The Yavapai-Prescott Indian Tribe Water Rights Settlement Act of 1994 (the "Settlement Act"), Pub.L.No. 103-434, 108 STAT. 4526 (1994), which among other things, approved, ratified and confirmed the aforementioned settlement agreement.

1.6 The assignment of the Prescott Subcontract is authorized under § 105 of the Settlement Act. Pursuant to § 106 of the Settlement Act, the Secretary of the Interior of the United States has established the Verde River Basin Water Fund as United States Department of the Interior Trust Fund, Account No. JA9321694 (the "Water Fund") into which monies obtained through the assignment of the Prescott Subcontract are to be deposited.
1.7 Prescott believes that it is entitled to water-supply benefits of the CAP, as evidenced by the exchange provisions in the Colorado River Basin Project Act and by the assignment authorization contained in the Settlement Act. Prescott is seeking to assign the Prescott Subcontract to Scottsdale in exchange for payment to be made into the Water Fund for distribution as provided in the Settlement Act. Monies distributed from the Water Fund pursuant to the Settlement Act shall be used by Prescott for the exclusive purposes of acquiring, investigating and developing an alternative water supply.

1.8 Scottsdale has limited water resources, which are insufficient to provide a long term renewable water supply for all future development within its water service area. Scottsdale wishes to increase its long-term renewable water supply by accepting an assignment of the Prescott Subcontract from Prescott.

NOW, THEREFORE, in consideration of the premises and of the promises and agreements hereinafter set forth, the parties hereto agree as follows:

2.0 DEFINITIONS

This Agreement will employ abbreviated terms which will have meanings as stated below.

2.1 "Amendment" shall mean the agreement which amends the Scottsdale Subcontract among the United States, CAWCD and Scottsdale in the form attached hereto as Exhibit "B" or a substantially similar agreement which increases Scottsdale's annual subcontract entitlement by an amount that includes the 7,127 acre feet assigned by Scottsdale pursuant to the Assignment.
2.2 "Assignment" shall mean the agreement among Prescott and, Scottsdale in the form attached hereto as Exhibit "A".

2.3 "CAP" shall mean the Central Arizona Project, a reclamation project constructed by the United States of America pursuant to the Colorado River Basin Project Act, 43 U.S.C. §§ 1501 et seq.

2.4 "CAP Master Repayment Contract" shall mean the Contract between the United States and CAWCD for Delivery of Water and Repayment of Costs of the Central Arizona Project dated December 1, 1988 (Contract No. 14-06-W-245, Amendment No. 1), and any amendment or revision thereof.

2.5 "CAWCD" shall mean the Central Arizona Water Conservation District, a water conservation district organized under the laws of Arizona, with its principal place of business in Phoenix, Arizona.

2.6 "Contracting Officer" shall mean the Secretary of the Interior of the United States or his duly authorized representative.

2.7 "Escrow" shall mean the escrow established by Prescott with First American Title Insurance Company pursuant to the Escrow Agreement.

2.8 "Escrow Agreement" shall mean the agreement between Prescott and First American Title Insurance Company in the form attached hereto as Exhibit "C".

2.9 "Prescott" shall mean the City of Prescott, an Arizona municipal corporation.

2.10 "Prescott Subcontract" shall mean CAP Water Service Subcontract No. 5-07-30-W0283 among the United States, CAWCD and Prescott.
2.11 "Scottsdale" shall mean the City of Scottsdale, an Arizona municipal corporation.

2.12 "Scottsdale Subcontract" shall mean CAP Water Service Subcontract No. 5-07-30-W0063 among the United States, CAWCD and Scottsdale.


2.14 "Subcontract Amount" shall mean $167,495, which is the amount due before December 1, 1995 pursuant to the Prescott Subcontract and not previously paid by Prescott.

2.15 "United States" shall mean the United States of America, acting through the Secretary of the Interior.

2.16 "Validation Date" shall mean the date on which a Validation Order shall be conclusive as to the validity of the Amendment, as determined pursuant to A.R.S. § 48-3734.B.

2.17 "Validation Order" shall mean an order, decree or judgment, issued by a court of competent jurisdiction pursuant to A.R.S. §§ 48-3731 -- 48-3734, that the Amendment is valid and binding upon and enforceable against Scottsdale.

2.18 "Water Fund" shall mean the Verde River Basin Water Fund established pursuant to § 106 of the Settlement Act.

3.0 SUBSIDIARY AGREEMENTS

This Agreement includes as exhibits additional and subsidiary documents in the form of assignments, contract amendments and escrow instructions, all of which are attached hereto and incorporated herein as Exhibits A, B and C.
4.0 OBLIGATIONS OF PRESCOTT

4.1 Contemporaneously with its execution of this Agreement, Prescott shall execute the Assignment. Immediately upon the execution of this Agreement by the United States and CAWCD, Prescott shall execute the Escrow Agreement.

4.2 Prescott shall establish a trust account for the administration of monies paid to it from the Water Fund pursuant to § 106(d) of the Settlement Act, and shall enter into a contract with the Secretary of the Interior which shall expressly require the refund to Scottsdale of monies deposited in the Water Fund pursuant to Paragraph 5.2 of this Agreement if Scottsdale is entitled to such a refund pursuant to Paragraphs 6.2 and 7.3 of this Agreement.

4.3 Any and all monies received by Prescott pursuant to this Agreement may only be used for the purposes set forth in § 107(a) of the Settlement Act. In investigating, acquiring or developing alternative sources of water with monies released pursuant to the Settlement Act, the parties expressly agree that the expenditure of trust monies shall not constitute an expenditure of federal funds, exercise of federal authority, or other form of federal action affecting the environment. Development of alternative water sources shall not be inconsistent with the goal of the Prescott Active Management Area, preservation of the riparian habitat, flows and biota of the Verde River and its tributaries.

4.4 Immediately upon the execution of this Agreement by all parties hereto, Prescott shall cause the Escrow to be established with First American Title Insurance Company, pursuant to the Escrow Agreement. Immediately upon the occurrence of the conditions
stated in paragraph 4 of the Escrow Agreement, Prescott shall cause First American Title Insurance Company, as escrow agent, to disburse funds held in the Escrow as set forth in paragraph 5 of the Escrow Agreement. Upon the disbursal of monies to CAWCD as set forth in paragraph 5 of the Escrow Agreement, Prescott shall have satisfied in full any and all past, current and future charges which Prescott is or may be obligated to pay under the Prescott Subcontract.

4.5 Prescott indemnifies and holds harmless Scottsdale, the United States and CAWCD for any liabilities resulting from or relating to Prescott's obligations under the Prescott Subcontract arising prior to the extinguishment of the Prescott Subcontract pursuant to the Assignment and Prescott indemnifies and holds harmless Scottsdale, the United States, CAWCD and the Arizona Department of Water Resources ("ADWR") for any liabilities resulting from or relating to Prescott's use and expenditure of monies paid to Prescott pursuant to this Agreement, or resulting from or relating to Prescott's use of alternative sources of water developed with monies paid to Prescott pursuant to this Agreement.

5.0 OBLIGATIONS OF SCOTTSDALE

5.1 Contemporaneously with its execution of this Agreement, Scottsdale shall execute the Assignment. Subsequent to its execution of this Agreement, Scottsdale shall execute the Amendment whereby the Scottsdale Subcontract will be amended to increase Scottsdale's CAP entitlement thereunder by an amount which shall include the 7,127 acre-feet per year allotted under the Prescott Subcontract. Within ten (10) days of the execution of the
Amendment by all parties thereto, Scottsdale shall file and prosecute in a court of competent jurisdiction an action for validation of the Amendment until a final decision that is not subject to further appeal has been rendered. Scottsdale shall provide ADWR with written notice of the action for validation upon its filing and all subsequent proceedings as they occur.

5.2 Scottsdale shall cause to be deposited into the Water Fund the sum of $3,394,390 no later than December 29, 1995. Scottsdale shall cause the Subcontract Amount to be deposited into the Water Fund no later than January 31, 1995, unless prior to January 30, 1995, CAWCD notifies Scottsdale that the Board of Directors of CAWCD has approved the payment of the Subcontract Amount out of the funds to be deposited into the Escrow.

5.3 Within two (2) business days after the last to occur of the execution by all parties thereto of this Agreement, the Escrow Agreement, the Assignment and the Amendment, Scottsdale will deposit into the Escrow, in immediately available funds, an amount equal to $7,127,000 less all monies deposited by Scottsdale into the Water Fund pursuant to Paragraph 5.2 of this Agreement. At the same time as Scottsdale deposits the funds into the Escrow, Scottsdale will deposit instructions into the Escrow, authorizing First American Title Insurance Company, as escrow agent, to disburse the escrowed funds and interest earned thereon as provided in paragraph 5 of the Escrow Agreement. Upon the deposit of funds and instructions into the Escrow, Scottsdale shall provide ADWR with written notice thereof and a copy of the escrow instructions.

5.4 Within two (2) business days after the occurrence of the Validation Date, Scottsdale will notify the escrow agent under the
Escrow Agreement in writing that the Validation Date has occurred, with a copy of the notice to the United States and ADWR. If a Validation Order is denied by a court of competent jurisdiction, and no further appeal of that denial is possible, Scottsdale will notify the escrow agent under the Escrow Agreement that the Validation Order has been so denied, with a copy of the notice to the United States and ADWR.

5.5 Scottsdale indemnifies and holds harmless Prescott, CAWCD and the United States for any liabilities resulting from or relating to Scottsdale's obligations under its amended CAP subcontract or the use of water obtained pursuant to the Assignment.

6.0 OBLIGATIONS OF CAWCD AND THE UNITED STATES

6.1 The United States and CAWCD, acting independently, shall, contemporaneously with their execution of this Agreement, execute the Amendment and approve the Assignment. The United States and CAWCD acknowledge that the monies to be disbursed to CAWCD pursuant to the Escrow Agreement constitute payment in full for any and all past, current and future charges which Prescott is or may be obligated to pay under the Prescott Subcontract.

6.2 Upon the occurrence of the conditions set forth in §§ 106(c) and (d) of the Settlement Act, the United States shall disburse from the Water Fund all monies deposited by Scottsdale into the Water Fund pursuant to Paragraph 5.2 of this Agreement, plus accrued interest (if any), to the trust account established by Prescott pursuant to § 106(d) of the Settlement Act, with notice thereof to ADWR. If (a) a court of competent jurisdiction denies validation of the Amendment and no further appeal is possible, and
(b) the Water Fund then contains monies that were deposited by Scottsdale into the Water Fund, then the United States shall refund promptly such monies from the Water Fund to Scottsdale.

7.0 EFFECTIVE DATES

7.1 This Agreement shall be binding and effective against the parties hereto only upon the execution of the Agreement by all of the parties hereto.

7.2 Neither the Assignment nor the Amendment shall be effective until the Validation Date; provided, however, that no party to this Agreement may request judicial review of a Validation Order; and provided, further, that for purposes of entitlement to CAP water and payment of water service charges under the Prescott Subcontract, the Assignment and the Amendment shall be deemed effective upon execution by all parties thereto and upon the approval by the United States and CAWCD of the Assignment. CAWCD shall defer until the Validation Date the collection of all charges that become due on or after December 1, 1995 pursuant to the Prescott Subcontract. The payment of the deferred charges shall be satisfied out of the escrowed funds and interest earned thereon to be paid to the CAWCD as provided in paragraph 5 of the Escrow Agreement. The payment of other charges due before December 1, 1995 under the Prescott Subcontract may be satisfied out of the escrowed funds and interest earned thereon to be paid to the CAWCD as provided in paragraph 5 of the Escrow Agreement, to the extent such payment is approved by the Board of Directors of CAWCD.

7.3 If a court of competent jurisdiction denies validation of the Amendment and no further appeal is possible, the rights and obligations of the parties pursuant to this Agreement shall be null
and void, the Assignment and the Amendment described herein shall be of no further force or validity, and all monies deposited into the Water Fund pursuant to Paragraph 5.2 hereof, together with interest thereon (if any), and any monies placed in escrow pursuant to Paragraph 5.3 hereof, together with interest thereon, shall be returned to Scottsdale.

8.0 NOTICES

Any notice or other communication with respect to this Agreement shall be in writing and shall be effective only if sent by personal delivery, or by United States registered or certified mail, return receipt requested, postage prepaid, or by Federal Express or similar generally-recognized overnight carrier regularly providing proof of delivery, addressed to the parties at the respective addresses set forth opposite their names below, or at such other address or addresses as they may have theretofore specified by written notice delivered in accordance herewith.

If to Prescott:
City of Prescott
Prescott City Manager
P. O. Box 2059
Prescott, Arizona 86302

With copy to:
City of Prescott
Prescott City Attorney
P. O. Box 2059
Prescott, Arizona 86302

If to Scottsdale:
City of Scottsdale
Water Resources Department
9388 East San Salvador
Scottsdale, Arizona 85258
Attention: Roger Klinger

If to CAWCD:
Central Arizona Water Conservation District
23636 North 7th Street
Phoenix, Arizona 85024
Attention: David S. “Sid” Wilson, Jr.
If to the United States: United States Bureau of Reclamation
Lower Colorado Region
P.O. Box 61470
Boulder City, Nevada 89006-1470
Attention: Regional Director

If to ADWR:
Arizona Department of Water Resources
500 North 3rd Street
Phoenix, Arizona 85004
Attention: Rita P. Pearson, Director

Any notice or communication given or served by personal
delivery shall be deemed given or served upon receipt. Any notice
or communication so given or served by mail shall be deemed to have
been given or served as of the date of delivery (whether accepted
or refused) established by the U.S. Postal Service return receipt
or the overnight carrier's proof of delivery, as the case may be.

9.0 MISCELLANEOUS

9.1 To the extent Section 38-511, Arizona Revised Statutes,
is applicable to this Agreement, Scottsdale and Prescott hereby
represent that the persons significantly involved in the
initiating, negotiating, securing, drafting and creating this
Agreement on behalf of Scottsdale are Roger Klinger and Barbara R.
Goldberg and on behalf of Prescott are John R. Moffitt and Brad
Huza.

9.2 The headings of this Agreement are for reference only and
shall not limit or define the meaning of any provision of this
Agreement.

9.3 This Agreement may be executed in duplicate originals,
each of which shall constitute an original Agreement. This
Agreement may be executed in any number of counterparts, each of
which shall be an original, but all of which together shall
constitute one and the same instrument.
9.4 The provisions of this Agreement shall inure to the benefit of, and shall be binding upon, the respective successors and assigns of the parties hereto; provided, however, that successors and assigns created by operation of law or otherwise, shall be subject to prior consultation and review by ADWR.

9.5 Each party agrees in good faith to execute such further or additional documents as may be necessary or appropriate to fully carry out the intent and purpose of this Agreement.

9.6 This Agreement shall be construed in accordance with all applicable laws of the United States and the State of Arizona.

9.7 The parties hereto agree that this Agreement is a contract under 28 U.S.C. § 1346 and is entered into pursuant to Federal Reclamation Law and is subject to the waiver of sovereign immunity in 43 U.S.C. § 390uu.

9.8 This Agreement constitutes the entire agreement between the parties and no understandings or obligations not herein expressly set forth shall be binding upon them. This Agreement may not be modified or amended in any manner unless in writing and signed by all of the parties hereto, which amendments or modifications shall be subject to prior consultation and review by ADWR.
IN WITNESS WHEREOF, the parties hereto have executed the Agreement herein on the day and year written below.

DATED this 27th day of September, 1996.

THE CITY OF PRESCOTT, an Arizona municipal corporation
By: Paul A.

PAUL S. DALY, Mayor

APPROVED AS TO FORM:

John R. Moffatt
City Attorney

ATTEST:

Marie L. Watson
City Clerk

DATED this 27th day of December, 1995.

THE CITY OF SCOTTSDALE, an Arizona municipal corporation
By: Herbert R. Brisker, Mayor

APPROVED AS TO FORM:

Barbara K. Goldberg
City Attorney

ATTEST:

Sonia Robertson
City Clerk

Legal Review and Approval

By: Pat Mathen
Field Solicitor
Phoenix, Arizona

Date: 9/4/96

THE UNITED STATES OF AMERICA

By: Robert W. Hansen
Commissioner
Bureau of Reclamation

Date: September 27, 1996

CENTRAL ARIZONA WATER CONSERVATION DISTRICT

By: President

Date: 9/5/96

Attest: Secretary
ASSIGNMENT OF RIGHTS AND ASSUMPTION OF OBLIGATIONS OF CENTRAL ARIZONA PROJECT MUNICIPAL AND INDUSTRIAL WATER SERVICE SUBCONTRACT

THIS ASSIGNMENT is made and entered into this 12th day of September 1996, by and between the City of Prescott, a municipal corporation of the State of Arizona ("Prescott"), and the City of Scottsdale, a municipal corporation of the State of Arizona ("Scottsdale").

Recitals

WHEREAS, Prescott, the United States of America (the "United States"), acting through the Secretary of the Interior, and the Central Arizona Water Conservation District ("CAWCD"), have entered into a Central Arizona Project ("CAP") water service subcontract for the annual delivery of 7,127 acre-feet of CAP Municipal and Industrial ("M&I") water, entitled "Subcontract Among the United States, the Central Arizona Water Conservation District, and the City of Prescott," Subcontract No. 2-07-30-W0283 (the "Subcontract"); and

WHEREAS, Prescott has agreed to assign its right, title and interest in the Subcontract to Scottsdale pursuant to a written agreement dated December 29, 1995 among Prescott, Scottsdale, CAWCD and the United States (the "Exchange Agreement"); and

WHEREAS, Article 6.7 of the Subcontract provides that the provisions of the Subcontract shall apply to and bind the successors and assigns of the parties to the Subcontract, but that no assignment of any portion of, or interest in, the Subcontract will be valid until approved by the United States;
NOW, THEREFORE, in consideration of the foregoing, the parties hereto agree as follows:

1. Prescott hereby assigns, transfers and conveys to Scottsdale all of its rights, title, interest and obligations under the Subcontract; provided, however, that Prescott does not assign to Scottsdale Prescott's obligation under Subarticles 5.2(c) and 5.2(d) of the Subcontract to pay charges in lieu of ad valorem taxes to CAWCD.

2. Scottsdale hereby accepts the assignment of the Subcontract and agrees to be bound by all of its terms and conditions; provided, however, that Scottsdale does not accept the obligations of Subarticles 5.2(c) and 5.2(d) of the Subcontract to pay charges in lieu of ad valorem taxes to CAWCD; and provided, further, that to the extent the terms and conditions of the existing CAP water service subcontract among Scottsdale, the United States and CAWCD, Central Arizona Project, Subcontract No. 5-07-30-W0063 (the "Scottsdale CAP Subcontract"), the terms and conditions of the Scottsdale CAP Subcontract shall control.

3. This Assignment shall not become effective until all of the following events have occurred:

   (a) This Assignment has been executed by Prescott and Scottsdale and the attached Approval has been executed by CAWCD and the United States;

   (b) This Assignment and related documents have been submitted to the Arizona Department of Water Resources for review as provided by law;
(c) Scottsdale, the United States and CAWCD have executed an amendment to the Scottsdale CAP Subcontract which increases Scottsdale's annual subcontract entitlement by an amount which shall include the 7,127 acre-feet allotted under the Subcontract;

(d) The amendment of the Scottsdale CAP subcontract has been validated by a court of competent jurisdiction and such court has entered a final decree adjudging the amendment to be valid and binding upon and enforceable against Scottsdale;

(e) CAWCD has received payment of all funds held in First American Title Insurance Company Escrow No. ____________ (the "Escrow"), plus all interest accruing on such funds; and


4. Upon this Assignment becoming effective, the Subcontract shall be extinguished and have no further force or effect.
IN WITNESS WHEREOF, the parties hereto have executed this Assignment the day and year first above-written.

DATED this 87th day of September, 1996

THE CITY OF PRESCOTT, an Arizona municipal corporation
By: PAUL S. DALY, Mayor

APPROVED AS TO FORM:

JOHN R. MOFFITT
City Attorney

ATTEST:

MARIE L. WATSON
City Clerk

DATED this 27th day of December, 1995.

THE CITY OF SCOTTSDALE, an Arizona municipal corporation
By: Herbert R. Drinkwater, Mayor

APPROVED AS TO FORM:

Barbara R. Goldberg
City Attorney

ATTEST:

Sonia Robinson
City Clerk
APPROVAL

The undersigned, pursuant to Article 6.7 of the Subcontract, on behalf of the United States of America, acting through the Secretary of the Interior, and the Central Arizona Water Conservation District, hereby approve the foregoing Assignment in accordance with its terms.

CAWCD and the United States shall release Prescott from its obligations under the Subcontract, including but not limited to the obligations under Subarticles 5.2(c) and 5.2(d) of the Subcontract to pay charges in lieu of ad valorem taxes, upon the date that the foregoing Assignment becomes effective according to its terms.

Legal Review and Approval

By: __________________________
    Field Solicitor
    Phoenix, Arizona

THE UNITED STATES OF AMERICA

By: __________________________
    Commissioner
    Bureau of Reclamation

CENTRAL ARIZONA WATER CONSERVATION DISTRICT

By: __________________________
    President

Attest: _________________________
    Secretary
AGREEMENT AMONG THE UNITED STATES,
THE CENTRAL ARIZONA WATER CONSERVATION DISTRICT,
AND THE CITY OF SCOTTSDALE

AMENDMENT NO. 5 TO WATER SERVICE SUBCONTRACT

THIS AGREEMENT is made and entered into this ______ day of
________________, 1995, by and among the United States of America,
hereinafter referred to as the "United States", acting through the
Secretary of Interior, the Central Arizona Water Conservation
District (the " Contractor"), and the City of Scottsdale (the
" Subcontractor ").

Recitals

WHEREAS, the United States, the Contractor, and the
Subcontractor have entered into a "Subcontract Among the United
States, the Central Arizona Water Conservation District, and the
City of Scottsdale, Providing for Water Service, Central Arizona
Project," Subcontract No. 5-07-30-W0063, hereinafter referred to as
the "Water Service Subcontract"; and

WHEREAS, the City of Prescott (" Prescott") entered into a
"Subcontract Among the United States, the Central Arizona Water
Conservation District and the City of Prescott, Providing for Water
Service, Central Arizona Project," Subcontract No. 2-07-30-W0283; and

WHEREAS, pursuant to an agreement dated ________________,
among Prescott, the Subcontractor, the Contractor and the United
States, Prescott has agreed to assign all right, title and interest
in its water service subcontract No. 2-07-30-W0283 to the
Subcontractor. Prescott and the Subcontractor have executed an
Assignment of Rights and Assumption of Obligations of Prescott's
Central Arizona Project M&I Water Service Subcontract No. 2-07-30-W0283; and

WHEREAS, the City of Nogales ("Nogales") entered into a
"Subcontract Among the United States, the Central Arizona Water
Conservation District and the City of Nogales, Providing for Water
Service, Central Arizona Project," Subcontract No. 3-07-30-W0300; and

WHEREAS, pursuant to an agreement dated ________________,
among Nogales, the Subcontractor, the Contractor and the United
States, Nogales has agreed to assign all right, title and interest
in its water service subcontract No. 3-07-30-W0300 to the
Subcontractor. Nogales and the Subcontractor have executed an
Assignment of Rights and Assumption of Obligations of Nogales'
Central Arizona Project M&I Water Service Subcontract No. 3-07-30-
W0300; and

WHEREAS, Rio Rico Utilities, Inc. ("Rio Rico") entered into a
"Subcontract Among the United States, the Central Arizona Water
Conservation District and Rio Rico Utilities, Inc., Providing for
Water Service, Central Arizona Project," Subcontract No. 3-07-30-
W0304; and

WHEREAS, pursuant to an agreement dated ________________,
among Rio Rico, the Subcontractor, the Contractor and the United
States, Rio Rico has agreed to assign all right, title and interest
in its water service subcontract No. 3-07-30-W0304 to the
Subcontractor. Rio Rico and the Subcontractor have executed an
Assignment of Rights and Assumption of Obligations of Rio Rico's
Central Arizona Project M&I Water Service Subcontract No. 3-07-30-W0304; and

WHEREAS, Cottonwood Water Works, Inc. ("Cottonwood") entered into a "Subcontract Among the United States, the Central Arizona Water Conservation District and Cottonwood Water Works, Inc., Providing for Water Service, Central Arizona Project," Subcontract No. 3-07-30-W0297; and

WHEREAS, pursuant to an agreement dated ____________, among Cottonwood, the Subcontractor, the Contractor and the United States, Cottonwood has agreed to assign all right, title and interest in its water service subcontract No. 3-07-30-W0297 to the Subcontractor. Cottonwood and the Subcontractor have executed an Assignment of Rights and Assumption of Obligations of Cottonwood's Central Arizona Project M&I Water Service Subcontract No. 3-07-30-W0297; and

WHEREAS, Camp Verde Water System ("Camp Verde") entered into a "Subcontract Among the United States, the Central Arizona Water Conservation District and Camp Verde Water System, Providing for Water Service, Central Arizona Project," Subcontract No. 3-07-30-W0298; and

WHEREAS, pursuant to an agreement dated ____________, among Camp Verde, the Subcontractor, the Contractor and the United States, Camp Verde has agreed to assign all right, title and interest in its water service subcontract No. 3-07-30-W0298 to the Subcontractor. Camp Verde and the Subcontractor have executed an Assignment of Rights and Assumption of Obligations of Camp Verde's
Central Arizona Project M&I Water Service Subcontract No. 3-07-30-W0298; and

WHEREAS, Mayer Domestic Water Improvement District ("Mayer") entered into a "Subcontract Among the United States, the Central Arizona Water Conservation District and Mayer Domestic Water Improvement District, Providing for Water Service, Central Arizona Project," Subcontract No. 3-07-30-W0299; and

WHEREAS, pursuant to an agreement dated __________, among Mayer, the Subcontractor, the Contractor and the United States, Mayer has agreed to assign all right, title and interest in its water service subcontract No. 3-07-30-W0299 to the Subcontractor. Mayer and the Subcontractor have executed an Assignment of Rights and Assumption of Obligations of Mayer’s Central Arizona Project M&I Water Service Subcontract No. 3-07-30-W0299; and

WHEREAS, the Yavapai-Prescott Tribe ("Tribe") entered into a "Central Arizona Project Indian Water Delivery Contract Between the United States and the Yavapai-Prescott Tribe"; and

WHEREAS, pursuant to an agreement dated __________, among the Tribe, the Subcontractor, and the United States, the Tribe has agreed to assign all right, title and interest in its water delivery contract to the Subcontractor. The Tribe and the Subcontractor have executed an Assignment of Rights and Assumption of Obligations of the Tribe’s Central Arizona Project M&I Water Service Contract, which has been approved by the United States.

NOW THEREFORE, the parties hereto agree as follows:
1. Amendment No. 4 to Water Service Subcontract No. 5-07-30-W0063, executed on December 8, 1994, is superseded by this Amendment No. 5 to Water Service Subcontract.

2. Definitions. The definitions used in the Water Service Subcontract shall also be applicable to this Amendment. In addition, the term "Tribal Water" shall mean the 500 acre-feet of Central Arizona Project water assigned by the Tribe to the Subcontractor.

3. Amendment of Subarticle 4.12(a). Subarticle 4.12(a) of the Water Service Subcontract is hereby amended to read as follows:

"4.12 Entitlement to Project Water.

(a) For the Year in which the Secretary issues the Notice of Completion of the Water Supply System, the Subcontractor’s entitlement to Project Water for M&I uses shall be determined by the Contractor after consultation with the Subcontractor and the Contracting Officer. Commencing with the Year following that in which the Secretary issues the Notice of Completion of the Water Supply System, the Subcontractor is entitled to take a maximum of 44,399 acre-feet of Project Water for M&I uses including but not limited to ground water recharge."

4. Amendment of Subarticle 5.2(a). Subarticle 5.2(a) of the Water Service Subcontract is hereby amended to read as follows:

"5.2 M&I Water Service Charges

(a) Subject to the provisions of Article 5.4 hereof and in addition to the OM&R payments required in Article 5.1 hereof, the Subcontractor shall, in advance of the delivery of Project M&I Water by the United States or the Operating Agency, make payment to the Contractor in equal semiannual installments of an M&I water service capital charge based on a maximum entitlement of 43,899 acre-feet per year multiplied by the rates set forth in the following schedule.

<table>
<thead>
<tr>
<th>Payment for the calendar year of</th>
<th>Payment due for each acre-foot of purchased capacity</th>
</tr>
</thead>
<tbody>
<tr>
<td>1988-1993</td>
<td>$5</td>
</tr>
<tr>
<td>1994</td>
<td>6</td>
</tr>
<tr>
<td>1995</td>
<td>8</td>
</tr>
<tr>
<td>Year</td>
<td>Payment due for each acre-foot of purchased capacity</td>
</tr>
<tr>
<td>------------</td>
<td>------------------------------------------------------</td>
</tr>
<tr>
<td>1996</td>
<td>10</td>
</tr>
<tr>
<td>1997</td>
<td>12</td>
</tr>
<tr>
<td>1998</td>
<td>14</td>
</tr>
<tr>
<td>1999</td>
<td>15</td>
</tr>
<tr>
<td>2000</td>
<td>16</td>
</tr>
<tr>
<td>2001</td>
<td>17</td>
</tr>
<tr>
<td>2002</td>
<td>18</td>
</tr>
<tr>
<td>2003</td>
<td>19</td>
</tr>
<tr>
<td>2004</td>
<td>20</td>
</tr>
<tr>
<td>2005</td>
<td>21</td>
</tr>
<tr>
<td>2006</td>
<td>22</td>
</tr>
<tr>
<td>2007</td>
<td>23</td>
</tr>
<tr>
<td>2008</td>
<td>24</td>
</tr>
<tr>
<td>2009</td>
<td>25</td>
</tr>
<tr>
<td>2010</td>
<td>26</td>
</tr>
<tr>
<td>2011</td>
<td>27</td>
</tr>
<tr>
<td>2012</td>
<td>28</td>
</tr>
<tr>
<td>2013</td>
<td>29</td>
</tr>
<tr>
<td>2014</td>
<td>30</td>
</tr>
<tr>
<td>2015</td>
<td>31</td>
</tr>
<tr>
<td>2016</td>
<td>32</td>
</tr>
<tr>
<td>2017</td>
<td>33</td>
</tr>
<tr>
<td>2018</td>
<td>34</td>
</tr>
<tr>
<td>2019</td>
<td>35</td>
</tr>
<tr>
<td>2020</td>
<td>36</td>
</tr>
<tr>
<td>2021</td>
<td>37</td>
</tr>
<tr>
<td>2022</td>
<td>38</td>
</tr>
<tr>
<td>2023</td>
<td>39</td>
</tr>
<tr>
<td>2024</td>
<td>40</td>
</tr>
<tr>
<td>2025 - through the end of the term of this subcontract</td>
<td>40</td>
</tr>
</tbody>
</table>

5. Amendment of Subarticle 5.2(c). Subarticle 5.2(c) of the Water Service Subcontract is hereby amended to read as follows:

"(c) On or before the first anniversary date of execution of this subcontract (October 25) and on or before each succeeding anniversary, the Subcontractor shall pay, in addition to all other payments required herein, an M&I subcontract charge. The subcontract charge shall be $2.00 per acre-foot for 43,899 acre-feet of M&I water. Prior to the date of issuance of the Notice of Completion of the Water Supply System, the subcontract charge shall be paid each Year by the Subcontractor to the United States. The Contracting Officer shall advise the Contractor of the amounts and dates of the Subcontractor’s payments. After the date of issuance of the Notice of Completion of the Water Supply System, the subcontract charge shall be paid each Year to the Contractor by the Subcontractor and the Contractor"
shall credit the revenues obtained from the subcontract charge against the Subcontractor's water service charges payable to the Contractor that Year."

6. For the purposes of determining the allocation and repayment of costs of the Central Arizona Project ("CAP") as provided in Article 9.3 of the Contract between the United States and the Central Arizona Water Conservation District for Delivery of Water and Repayment of Costs of the Central Arizona Project, dated December 1, 1988 (Contract No. 14-06-W-245, Amendment No. 1), and any amendment or revision thereof, the costs associated with the delivery of Tribal Water shall be non-reimbursable, and such costs shall be excluded from the Contractor's repayment obligation.

7. For the purposes of determining OM&R costs as provided in Subarticle 5.1 of the Water Service Subcontract, there shall be no distinction made between Tribal Water and other municipal and industrial ("M&I") water delivered pursuant to the Water Service Subcontract.

8. For the purposes of determining priority in case of shortage as provided in Subarticle 4.7 of the Water Service Subcontract, Tribal Water shall be considered Indian, non-irrigation water and shall share a first priority on project water supplies with 510,000 acre-feet of non-Indian M&I water as set forth in the Secretary of the Interior's CAP water allocation decision published in the Federal Register on March 24, 1983.

9. The Subcontractor shall, in advance of the delivery of Tribal Water by the United States or the Operating Agency, make payment to the United States in equal semiannual installments of a Tribal Water service capital charge which shall be computed based
on a maximum entitlement of 500 acre-feet per year multiplied by the M&I Water service capital charge rate established pursuant to Subarticle 5.2 of the Water Service Subcontract; Provided, however, that the Tribal Water service capital charge shall not include any portion of the M&I Water service capital charge rate that is not to be used by the Contractor for meeting its repayment obligation to the United States. Such Tribal Water service capital charges shall be payable on or before June 1 and December 1 of each year and shall be applied by the United States against CAP construction costs that are not allocable to the Contractor. The Subcontractor shall not be obligated to pay the Contractor any M&I water service capital charges or M&I subcontract charges with respect to Tribal Water.

10. Within ten (10) days of the execution of this Agreement by all parties hereto, the Subcontractor shall promptly seek a final decree of the proper court of the State of Arizona decreeing and adjudging this Agreement to be valid and binding upon and enforceable against the Subcontractor. The Subcontractor shall furnish the United States and the Contractor a certified copy of such decree and of all pertinent supporting records. This Agreement shall not become effective until such final decree has been entered and no further appeal of that decree is possible, and until the Contractor has received payment of six million seven hundred forty-eight thousand six hundred and eighty-nine dollars ($6,748,689.00).
11. Except as amended herein, all terms, conditions, and provisions of the Water Service Subcontract shall remain unchanged and in full force and effect.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment No. 5 to Subcontract No. 5-07-30-W-0063 the day and year first above-written.

Legal Review and Approval
THE UNITED STATES OF AMERICA

By: ____________________________  By: ____________________________
   Field Solicitor                  Regional Director
   Phoenix, Arizona                 Lower Colorado Region
                                      Bureau of Reclamation

CENTRAL ARIZONA WATER
CONSERVATION DISTRICT

Attest: __________________________
   Secretary

By: ____________________________
   President

CITY OF SCOTTSDALE

Attest: __________________________
   City Clerk

By: ____________________________
   Mayor

/ Approved as to form:

City Attorney

a.Settsamd.Fnl
ESCROW AGREEMENT

This Escrow Agreement ("Escrow Agreement") is made this ___ day of ________, 199___, by and between the City of Prescott, an Arizona municipal corporation ("Prescott"), and First American Title Insurance Company, an Arizona corporation ("Escrow Agent").

RECITALS

A. Prescott is a party to an Agreement Among the City of Prescott, the City of Scottsdale, the United States of America and the Central Arizona Water Conservation District for the Exchange of Central Arizona Project Water (the "Exchange Agreement").

B. Pursuant to paragraph 4.4 of the Exchange Agreement, Prescott is required to open an escrow for the receipt of certain funds to be deposited by the City of Scottsdale ("Scottsdale") pursuant to paragraph 5.2 of the Exchange Agreement.

C. Prescott now wishes to open an escrow with Escrow Agent and provide instructions to Escrow Agent regarding disbursal of the funds, all on the terms and conditions contained herein.

AGREEMENT

FOR VALUABLE CONSIDERATION, the receipt and sufficiency of which are hereby acknowledged, Prescott and Escrow Agent agree as follows:

1. Appointment of Escrow Agent. Prescott hereby appoints and designates Escrow Agent as Escrow Agent for the purposes set forth herein, and Escrow Agent accepts said appointment.

2. Establishment of Escrow. Upon the execution of this
Agreement, Escrow Agent will establish its escrow No. ______ (the "Escrow"). All funds deposited into the Escrow shall be held and disbursed by Escrow Agent in accordance with the terms of this Escrow Agreement.

3. **Investments.** Prescott authorizes Escrow Agent to invest all monies deposited into the Escrow in an interest-bearing bank account, bank certificate of deposit, United States Treasury Bills or other investments acceptable to and approved by Prescott. Escrow Agent is authorized to withdraw or otherwise realize upon the investments of the monies deposited into Escrow only when funds are required for purposes of disbursement from the Escrow.

4. **Conditions to Disbursal of Funds.** Prescott hereby instructs the Escrow Agent to disburse all funds deposited into the Escrow immediately following the occurrence of both of the following:

   A. Scottsdale has deposited $3,732,610 in immediately available funds into the Escrow; and

   B. The Escrow Agent has received written notification from Scottsdale that the Validation Date has occurred.

The events described in subparagraphs 4(A) and 4(B) are referred to herein as the "Conditions to Disbursal". Except as provided in paragraph 6, both Conditions to Disbursal must occur before the Escrow Agent may disburse funds out of the Escrow. Prescott and the Escrow Agent shall not amend the Conditions to Disbursal unless Scottsdale consents to that amendment and Prescott provides prior written notice thereof to the Arizona Department of Water Resources ("ADWR") with the opportunity to comment. Prescott shall not instruct the Escrow Agent to disburse the funds out of the Escrow
without both of the Conditions to Disbursal having occurred, unless Scottsdale consents to that disbursal and Prescott has provided prior written notice thereof to ADWR with the opportunity to comment.

5. **Disbursal of Funds.** Immediately upon the occurrence of the Conditions to Disbursal stated in paragraph 4 (as such Conditions to Disbursal may be amended as provided in paragraph 4), the Escrow Agent shall disburse all funds held in the Escrow, together with all interest accruing thereon, by wire transfer to the Central Arizona Water Conservation District, at:

- **Name of Bank:**
- **Address of Bank:**
- **ABA Routing No.:**
- **To the Account of:**
- **Account No.:**
- **Reference No.:**

6. **Denial of Validation; Cancellation of Escrow.** The Escrow shall be cancelled if Scottsdale notifies Escrow Agent that a Validation Order has been denied by a court of competent jurisdiction, and that no further appeal of that denial is possible. If Scottsdale so notifies the Escrow Agent, the Escrow Agent shall disburse all funds held in the Escrow, including all interest earned thereon, to Scottsdale, and the Escrow shall be cancelled. Upon cancellation of the Escrow, the parties shall have no rights, obligations or remedies hereunder. All cancellation fees shall be paid by Prescott. Prescott shall provide Escrow Agent with appropriate wiring instructions to permit disbursal of the Escrow funds to Scottsdale, if applicable.

7. **Escrow Fees.** Upon the establishment of the Escrow, Prescott shall pay the Escrow Agent $___________ for the provision
by the Escrow Agent of the services described in this Escrow Agreement. No other fees or charges shall be due to the Escrow Agent for such services.

8. Notices. Any notice or other communication with respect to this Escrow Agreement shall be in writing and shall be effective only if sent by personal delivery, or by United States registered or certified mail, return receipt requested, postage prepaid, or by Federal Express or similar generally-recognized overnight carrier regularly providing proof of delivery, addressed to the parties at the respective addresses set forth opposite their names below, or at such other address or addresses as they may have theretofore specified by written notice delivered in accordance herewith.

If to Prescott:

City of Prescott
Prescott City Manager
P. O. Box 2059
Prescott, Arizona 86302

With copy to:

City of Prescott
Prescott City Attorney
P. O. Box 2059
Prescott, Arizona 86302

If to Escrow Agent:

First American Title Insurance Company
7373 North Scottsdale Road
Suite C-138
Scottsdale, Arizona 85253
Attention: Alix J. Graham

If to ADWR:

Arizona Department of Water Resources
500 North 3rd Street
Phoenix, Arizona 85004
Attention: Rita P. Pearson, Director

Any notice or communication given or served by personal delivery shall be deemed given or served upon receipt. Any notice or communication so given or served by mail shall be deemed to have
been given or served as of the date of delivery (whether accepted or refused), established by the U.S. Postal Service return receipt or the overnight carrier’s proof of delivery, as the case may be.

9. **Miscellaneous Escrow Terms.** Prescott agrees that:

A. It will deposit into Escrow all documents necessary to complete the transaction and satisfy the terms of the Escrow;

B. Any amendments or addendums to this Escrow Agreement shall be effective only if in writing and executed by Prescott with prior consultation and review by ADWR;

C. Escrow Agent shall not be bound by any unilateral escrow instructions, whether they be oral or written, authorizing disbursement of the funds deposited into the Escrow without both of the Conditions to Disbursement having occurred, unless Scottsdale consents to said instructions and Prescott has provided prior written notice thereof to ADWR with the opportunity to comment;

D. It shall indemnify and hold harmless Escrow Agent against all costs, damages, attorney’s fees, expenses and liabilities, which it may incur or sustain in connection with these instructions or any interpleader action;

E. Escrow Agent has the right to resign upon 10-days’ written notice to Prescott and ADWR;

F. Escrow Agent may at its election, in the event of any conflicting demands made upon it concerning this Escrow Agreement or this Escrow, hold any money and/or
documents deposited with Escrow Agent until Escrow Agent receives consistent instructions or until a civil action shall have been concluded in a court of competent jurisdiction, determining the rights of the parties hereto; and

G. Escrow Agent may at any time, in its sole discretion, commence a civil action to interplead any conflicting demands to a court of competent jurisdiction.

10. **Governing Law.** This Escrow Agreement is governed by and interpreted in accordance with the laws of the State of Arizona.

11. **Binding Effect.** This Escrow Agreement shall inure to the benefit of and bind the parties hereto and their respective successors and assigns; provided, however, that the successors and assigns of Prescott created by operation of law or otherwise shall be subject to prior consultation and review by ADWR.

12. **Counterparts.** This Escrow Agreement may be signed in several counterparts, each of which shall be deemed an original and all such counterparts shall constitute one and the same instrument.

13. **Definitions.** The term "Validation Date" means the date on which a Validation Order shall be conclusive as to the validity of an Amendment, as determined pursuant to A.R.S. § 48-3734.B. The term "Validation Order" means an order, decree or judgment, issued by a court of competent jurisdiction pursuant to A.R.S. §§ 48-3731 -- 48-3734, that an Amendment is valid and binding upon and enforceable against Scottsdale. The term "Amendment" means an amendment to the Central Arizona Project
("CAP") water service subcontract among the United States, the Central Arizona Water Conservation District and Scottsdale, Subcontract No. 5-07-30-W0063, increasing Scottsdale's CAP entitlement by an amount which shall include 7,127 acre feet originally allotted to Prescott under that water service subcontract among the United States, the Central Arizona Water Conservation District and Prescott, Subcontract No. 2-07-30-W0283.

DATED this ___ day of ________, 199__.

THE CITY OF PRESCOTT, an Arizona municipal corporation

By: ____________________________

PAUL S. DALY, Mayor

APPROVED AS TO FORM: ATTEST:

______________________________
JOHN R. MOFFITT MARIE L. WATSON
City Attorney City Clerk

FIRST AMERICAN TITLE INSURANCE COMPANY, an Arizona corporation

By: ____________________________
Date: ______________________  Escrow Number ____________

The undersigned party acknowledges that NO TITLE INSURANCE POLICY IS TO BE ISSUED and that THERE HAS BEEN AND WILL BE NO EXAMINATION OF TITLE under the above transaction by First American Title.

DATED this ____ day of __________, 1995.

THE CITY OF PRESCOTT, an Arizona municipal corporation

By: __________________________

PAUL S. DALY, Mayor

APPROVED AS TO FORM:  ATTEST:

JOHN R. MOFFITT
City Attorney

MARIE L. WATSON
City Clerk
CAP WATER EXCHANGE
INTERIM PAYMENT AGREEMENT

THIS AGREEMENT, dated the 29th day of December, 1995, is entered into by the City of Scottsdale, an Arizona municipal corporation ("Scottsdale"), the United States of America, acting through the Secretary of the Interior ("the United States"), the City of Prescott, an Arizona municipal corporation ("Prescott") and the Yavapai-Prescott Indian Tribe, a tribe of Yavapai Indians duly recognized by the Secretary of the United States Department of the Interior ("the Tribe").

1.0 RECITALS

1.1 In 1992 Prescott, the United States and the Central Arizona Water Conservation District entered into a CAP water service subcontract for the delivery of 7127 acre-feet of Central Arizona Project (CAP) municipal and industrial ("M&I") water per year, entitled "Subcontract Among the United States, the Central Arizona Water Conservation District, and the City of Prescott," Subcontract No. 2-07-30-W0283 ("the Prescott Subcontract").

1.2 In 1980, the Tribe and the United States, acting through the Secretary of the Interior, entered into a CAP water service contract for the delivery of 500 acre-feet of Indian project water per year from the CAP, entitled "Central Arizona Project Indian Water Delivery Contract Between the United States and the Yavapai-Prescott Tribe" (the Tribal Contract").

1.3 In accordance with the Yavapai-Prescott Indian Tribe Water Settlement Act of 1994, P.L. 103-434, 108 Stat. 452 (1994) (the "Act"), and pursuant to the Colorado River Basin Project Act, 43 U.S.C. § 1501, et seq., the Tribe desires to assign the Tribal Contract to Scottsdale pursuant to the terms of the Yavapai Exchange Agreement and the Yavapai Assignment, and Prescott desires to assign the Prescott Subcontract to Scottsdale pursuant to the terms of the Prescott Exchange Agreement and the Prescott Assignment. Scottsdale desires to accept the assignments of the Tribal Contract and the Prescott Subcontract.

1.4 Scottsdale is also negotiating exchanges of CAP M&I subcontracts with Rio Rico Utilities, Inc., the City of Nogales, Cottonwood Water Works, Inc., Camp Verde Water System, Inc. and Mayer Domestic Water Improvement District (together with Prescott and the Tribe, "the Exchanges").

1.5 The Act requires certain findings to be made by the Secretary of Interior by December 31, 1995. There are, however, certain actions that need to be taken in connection with the various Exchanges before the United States will approve the Exchanges. These actions will not be completed before December 31, 1995.
1.6 The parties to this Agreement desire to take certain actions to permit the Secretary to make the required findings pursuant to the Act by December 31, 1995 while delaying the effective date of certain agreements until the United States approves the Exchanges.

NOW, THEREFORE, in consideration of the premises and of the promises and agreements herein set forth, the parties hereto agree as follows:

2.0 DEFINITIONS

“Exchange Documents” shall mean all of the documents necessary to implement the assignment to Scottsdale of the respective CAP water entitlements of Prescott, the Tribe, Rio Rico Utilities, Inc., City of Nogales, Cottonwood Water Works, Inc., Camp Verde Water System, Inc., and Mayer Domestic Water Improvement District described on Exhibit A.

“Prescott Assignment” shall mean the Assignment of Rights and Assumption of Obligations of Central Arizona Project Municipal Industrial Water Service Contract, between the City of Prescott and the City of Scottsdale, in the form attached hereto as Exhibit B.

“Prescott Exchange Agreement” shall mean the Agreement Among the City of Prescott, the City of Scottsdale, the Central Arizona Water Conservation District and the United States, in the form attached hereto as Exhibit C.

“Water Fund” shall mean the Verde River Basin Water Fund, which fund has been established pursuant to section 105 of the Act.

“Yavapai Assignment” shall mean the Assignment of Rights and Assumption of Obligations of Central Arizona Project Water Contract, between the Tribe and the City of Scottsdale, in the form attached hereto as Exhibit D.

“Yavapai Exchange Agreement” shall mean the Agreement Between the Yavapai-Prescott Indian Tribe, the United States and the City of Scottsdale For the Exchange of Central Arizona Project Water, in the form attached hereto as Exhibit E.

AGREEMENT

The parties to this Agreement agree as follows:

3.0 Scottsdale and Prescott shall execute the Prescott Exchange Agreement and the Prescott Assignment by December 29, 1995.

4.0 Scottsdale and the Tribe shall execute the Yavapai Exchange Agreement and the Yavapai Assignment by December 29, 1995.
5.0  No later than December 29, 1995, Scottsdale shall deposit in the Water Fund 1) $540,000 in immediately available funds, representing the amount due to the Tribe under the Yavapai Exchange Agreement and the Yavapai Assignment , and 2) $3,394,390 in immediately available funds, representing the amount due to Prescott under the Prescott Exchange Agreement and Prescott Assignment.

6.0  By notice to the Bureau of Indian Affairs, with a copy to the Arizona Department of Water Resources, Scottsdale may request and shall receive the return of the money deposited in the Water Fund in the event any of the following occurs:

6.1  The United States imposes as a condition of its approval of any of the Exchange Documents any requirement on any party to the Exchange or language change in any of the Exchange Documents that was not included in the letter dated December 27, 1995 from Robert Johnson to Tom McCann, or the letters from Janet Ronald on behalf of the Arizona Department of Water Resources listed on Exhibit F hereto, and which language change requirement is not acceptable to Scottsdale; provided however, that Scottsdale may not request return of the money where the condition, requirement or language change is necessary to alleviate a specific problem identified in an environmental assessment ("EA") done for the purpose of compliance with the National Environmental Policy Act.

6.2  A court of competent jurisdiction denies validation of the Amendment and no further appeal is possible.

6.3  The United States has not approved the Assignments for all the Exchanges and Amendment No. 5 to Scottsdale's CAP Subcontract by June 28, 1996.

7.0  If a court of competent jurisdiction denies validation of the Amendment and no further appeal is possible, the rights and obligations of the parties pursuant to this Agreement shall be null and void, and any monies deposited in the Fund by Scottsdale or that have been transferred to the Tribe or Prescott shall be returned to Scottsdale within thirty (30) days of the order of denial.

8.0  The United States shall not distribute the money deposited in the Water Fund to the Tribe or Prescott, until such time as Scottsdale and the United States have executed Amendment No. 5 to Scottsdale's CAP Subcontract and the Yavapai Assignment and the Prescott Assignment have become effective. For purposes of this Agreement, the parties agree that compliance by the Secretary with section 106(c) of the Act is achieved, with regard to amounts paid from the Water Fund to the Tribe and to the City of Prescott, if such payments are made promptly after: (a) the execution by the United States of Amendment No. 5 to Scottsdale's CAP Subcontract, and (b) the effective date of the Yavapai Assignment and the Prescott Assignment.
9.0 Upon a request by Scottsdale for return of the money pursuant to this Agreement, within 30 days of Scottsdale’s request the United States shall pay Scottsdale the amount of money deposited in the Fund pursuant to this Agreement in immediately available funds, plus interest earned on that sum from the date of deposit by Scottsdale in the Water Fund, to the extent allowed by federal law. The United States shall pay by means of electronic bank transfer and Scottsdale shall give the United States electronic transfer instructions no later than two days before the transfer is to be made. If the money has been distributed to the Tribe, then the Tribe agrees to comply with this provision and return the money to Scottsdale within 30 days of a request for return. If money has been distributed to Prescott, then Prescott agrees to comply with this provision and return the money to Scottsdale within 30 days of a request for return.

10.0 Scottsdale may not request return of money from the Fund pursuant to sections 6.1 or 6.3 of this Agreement after July 31, 1996.

11.0 If Scottsdale requests and receives the return of all the money pursuant to Section 6.0 of this Agreement, then the Tribe and Prescott shall each be entitled to exchange their respective CAP entitlements with any acceptable parties.

12.0 NOTICES

Any notice or other communication with respect to this Agreement shall be in writing and shall be effective only if sent by personal delivery, or by United States registered or certified mail, return receipt requested, postage prepaid, or by Federal Express or similar generally-recognized overnight carrier regularly providing proof of delivery, addressed to the parties at the respective addresses set forth opposite their names below, or at such other address or addresses as they may have theretofore specified by written notice delivered in accordance herewith.

If to Prescott:
City of Prescott
Prescott City Manager
Box 2059
Prescott, Arizona 86302

With copy to:
City of Prescott
City Attorney
P. O. Box 2059
Prescott, Arizona 86302

If to Yavapai-Prescott Tribe:
Yavapai-Prescott Indian Tribe
530 Merritt Avenue
Prescott, Arizona 86301-2038
Attention: Tribal Business Manager
Tribal Board of Directors
If to Scottsdale:  
City of Scottsdale  
Water Resources Department  
9388 East San Salvador  
Scottsdale, Arizona 85258  
Attention: Roger Klingler

If to United States:  
Bureau of Indian Affairs  
P. O. Box 10  
Phoenix, Arizona 85001  
Attention: Area Director

If to DWR:  
Department of Water Resources  
500 North Third St.  
Phoenix, Arizona 85004  
ATTN: Rita P. Pearson, Director

12.0 MISCELLANEOUS

12.1 The headings of this Agreement are for reference only and shall not limit or define the meaning of any provision of this Agreement.

12.2 This Agreement may be executed in duplicate originals, each of which shall constitute an original Agreement. This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute one and the same instrument.

12.3 The provisions of this Agreement shall inure to the benefit of, and shall be binding upon, the respective successors and assigns of the parties hereto.

12.4 Each party agrees in good faith to execute such further or additional documents as may be necessary or appropriate to fully carry out the intent and purpose of this Agreement.

12.5 This Agreement shall be construed in accordance with all applicable laws of the State of Arizona and applicable federal law.

12.6 This Agreement constitutes the entire agreement between the parties and no understandings or obligations not herein expressly set forth shall be binding upon them. This Agreement may not be modified or amended in any manner unless in writing and signed by all of the parties hereto.

12.7 The parties agree that this Agreement is a contract under 28 U.S.C. § 1346 and is entered into pursuant to Federal Reclamation law and is subject to the waiver of sovereign immunity in 43 U.S.C. § 390uu.
12.8 Each party hereto agrees to take all necessary actions to make this Agreement binding and fully enforceable against that party.

12.9 Scottsdale is expressly made a third party beneficiary to the Settlement Agreement to the extent of the amount of money deposited in the Water Fund until the later of the date of return of the money to Scottsdale pursuant to a request made under section 6.0 of this Agreement or July 31, 1996 if no request is made by Scottsdale.

12.10 Time is of the essence of this Agreement.

12.11 All signatories hereto represent that they are legally authorized to execute this Agreement on behalf of their respective principals and to bind their principals to the obligations of this Agreement.

CITY OF SCOTTSDALE, an Arizona municipal corporation

By: 

[Signature]
Herbert R. Drinkwater, Mayor

ATTEST:

[Signed]
Sonia Robertson, City Clerk

APPROVED AS TO FORM:

[Signed]
Barbara R. Goldberg
Fredda J. Bisman, City Attorney

Dated: 12/27/95

THE UNITED STATES OF AMERICA, acting through the Secretary of Interior, on behalf of the Bureau of Reclamation

By: 

[Signature]
Robert Johnson, Regional Director

LEGAL REVIEW AND APPROVAL:

[Signature]
Field Solicitor
Dated: 12/22/95

THE UNITED STATES OF AMERICA, acting through the Secretary of Interior, on behalf of the Bureau of Indian Affairs

By: Walter Mills, Area Director
Phoenix Area Office

LEGAL REVIEW AND APPROVAL:

Field Solicitor
Dated: 12/22/95

CITY OF PRESCOTT, an Arizona municipal corporation

By: Paul S. Daly, Mayor

ATTEST:

Marie L. Watson, City Clerk
Dated: 

YAVAPAI-PRESCOTT INDIAN TRIBE, a tribe of Yavapai Indians duly recognized by the Secretary of the United States Department of the Interior

By: Stan Rice, Jr, President
Dated: 

7
Dated: __________________________

THE UNITED STATES OF AMERICA, acting through the Secretary of Interior, on behalf of the Bureau of Indian Affairs

By: ___________________________
    Walter Mills, Area Director
    Phoenix Area Office

LEGAL REVIEW AND APPROVAL:

Field Solicitor

Dated: __________________________

CITY OF PRESCOTT, an Arizona municipal corporation

By: ___________________________
    Paul S. Daly, Mayor

ATTEST:

[Signature]
Marie L. Watson, City Clerk

Dated: 12/26/95

YAVAPAI-PRESCOTT INDIAN TRIBE, a tribe of Yavapai Indians duly recognized by the Secretary of the United States Department of the Interior

By: ___________________________
    Stan Rice, Jr, President

Dated: __________________________

7
AGREEMENT FOR THE PAYMENT OF MONIES FROM THE VERDE RIVER BASIN WATER FUND (YAVAPAI-PRESCOTT INDIAN TRIBE)

This Agreement for the Payment of Monies from the Verde River Basin Water Fund ("Agreement") is entered into this 21st day of January, 1998, between the Yavapai-Prescott Indian Tribe ("Tribe") and the Secretary of the Interior ("Secretary") pursuant to and in accordance with the Yavapai-Prescott Indian Tribe Water Rights Settlement Act of 1994 ("Act"), Public Law 103-434, (October 31, 1994).

RECITALS

WHEREAS, the Secretary has established the Verde River Basin Water Fund ("The Fund") pursuant to and in accordance with the Act to hold in trust certain monies, including, but not limited to, monies obtained from the assignment or purchase of the Central Arizona Project ("CAP") contract of the Tribe and monies contributed by the State of Arizona, for ultimate payment to the Tribe; and

WHEREAS, the Tribe has assigned its CAP contract providing for an allocation of Central Arizona Project water to the City of Scottsdale ("Scottsdale"); and

WHEREAS, Scottsdale has deposited $540,000 into The Fund, for the benefit of the Tribe, in consideration of the conveyance of the Tribe’s CAP allocation to Scottsdale; and

WHEREAS, the State of Arizona has also deposited $200,000 into The Fund for the benefit of the Tribe pursuant to Section 109(b) of the Act; and

WHEREAS, on June 27, 1996, the Secretary caused to be published in the Federal Register, a statement of findings as provided in Section 112(a) of the Act; and

WHEREAS, the Act directs the Secretary, following publication of the statement of findings, to disburse from The Fund to the Tribe, those monies deposited into The Fund pursuant to Section 109(b) of the Act, as well as those monies obtained from the assignment or purchase of the Tribe’s CAP contract and deposited into The Fund, including all interest due and received thereon ("Tribe’s Fund Proceeds"), provided the Secretary and the Tribe first execute an agreement which complies with the requirements of Section 106(d) of the Act; and

WHEREAS, the Secretary and the Tribe wish to enter into an agreement pursuant to and in accordance with the requirements of Section 106(d) of the Act; and

THEREFORE, in consideration of the following terms, conditions, and promises, the Secretary and the Tribe agree as follows:
AGREEMENT

1. Within thirty (30) days of the execution of the Agreement, the Tribe shall establish a trust account ("Tribe’s Trust Account") with a federally insured financial institution acceptable to the Tribe, into which the Tribe’s Fund Proceeds may be deposited and administered in accordance with the Act.

2. Within thirty days of receiving written notice from the Tribe that the Tribe’s Trust Account has been established, the Secretary shall cause to be disbursed from The Fund, the Tribe’s Fund Proceeds for deposit into the Tribe’s Trust Account. The notice informing the Secretary of the establishment of the Tribe’s Trust Account shall include: the name and address of the institution where said account has been established and will be maintained; the name and account number of said account; the identification and phone number of a contact person at the institution; and instructions for depositing the Tribe’s Fund Proceeds into the Tribe’s Trust Account.

3. The Tribe shall not use any of the Tribe’s Fund Proceeds deposited into the Tribe’s Trust Account for any purpose other than those purposes set forth in Section 107 of the Act.

4. The Tribe shall provide for yearly audits of the Tribe’s Trust Account, based on the fiscal year October 1 through September 30, to determine compliance with Section 107 of the Act. The Tribe agrees to provide the Secretary with a copy of each yearly audit by December 31 of each year commencing in 1998. The Secretary shall consult with the Bureau of Indian Affairs, Phoenix Area Office, Branch of Land and Water Resources, concerning each annual audit and the determination of compliance with Section 107 of the Act.

5. In the event the Secretary determines that the Tribe has used any Tribe’s Fund Proceeds for a purpose or purposes not within Section 107 of the Act, the Tribe understands and agrees that it shall repay to The Fund that amount, with interest at the Treasury Overnight interest rate, used in a manner not authorized by the Act. The Tribe and the Secretary agree and understand that the Secretary may consider any and all information available to him, including, but not limited to, the audit(s) described in paragraph 4 of this Agreement, to determine whether the Tribe has used any amount of the Tribe’s Fund Proceeds in a manner inconsistent with Section 107 of the Act.

6. In the event the Tribe repays an amount of the Tribe’s Fund Proceeds to The Fund pursuant to Section 106(d) of the Act and paragraph 5 of this Agreement, the Secretary and the Tribe agree that the Secretary’s disbursement of said amount to the Tribe for deposit into the Tribe’s Trust Account shall be subject to the terms of the Act and this Agreement.

7. The Tribe acknowledges and understands that the Act provides that effective with the deposit of the Tribe’s Fund Proceeds into the Tribe’s Trust Account the United States shall not be liable for any claim or cause of action arising from the use of the Tribe’s Fund Proceeds by the Tribe.
8. Any notice or document required to be given to the Secretary under the terms and conditions of this Agreement shall be in writing and delivered in person or mailed, postage prepaid, by certified mail, return receipt requested, to the following address:

Office of Trust Funds Management  
Attention: Chief, Division of Quality Assurance  
505 Marquette N. W., Suite 1000  
Albuquerque, New Mexico 87102  
(505) 248-5751

IN WITNESS WHEREOF, the parties have executed and delivered this Agreement as of the date first above written.

SECRETARY OF THE INTERIOR

By: [Signature]  
Paul Homan  
Special Trustee for American Indians

YAVAPAI-PREScott INDIAN TRIBE

By: [Signature]  
Stan Rice, Jr.  
President
RESOLUTION NO. 98-05
OF THE GOVERNING BODY OF THE
YAVAPAÏ-PRESCTT INDIAN TRIBE

WHEREAS, the Yavapai-Prescott Indian Tribe is a Federally
recognized tribe duly organized with a tribal governing
body known as the Tribal Board of Directors; and,

WHEREAS, the Yavapai-Prescott Indian Tribe Water Rights Settlement
Act of 1994 (PL 103-434), establishes the "Verde River
Basin Water Fund"; and,

WHEREAS, Tribal access to these funds is conditioned upon the
negotiation of a contract between the Tribe and the
Secretary of the Interior of the United States of
America; and,

WHEREAS, the Tribe and the Secretary of the Interior have
completed said negotiations the Tribe is seeking access
to the fund.

NOW, THEREFORE BE IT RESOLVED, that the Yavapai-Prescott Indian
Tribe Board of Directors authorizes the President to sign
the negotiated agreement between the Tribe and the
Department of the Interior.

BE IT FURTHER RESOLVED that the Yavapai-Prescott Indian Tribe Board
of Directors authorizes the President to request the
Office of Trust Management take the necessary and
appropriate measures to transfer the Tribe’s Verde River
Basin Water Funds into Tribal accounts and control.

CERTIFICATION

I, the undersigned, as President of the Board of Directors for the
Yavapai-Prescott Indian Tribe, hereby certify that the Board is
composed of five (5) members, of whom (4) members constituting a
quorum, were polled on the 21th day of January, 1998, and that the
foregoing Resolution was adopted by a vote of 4 in favor, 0
against, under the authority of the Articles of Association,
Article VI, Section 1 (a), (b), (g), and (h).

[Signature]
PRESIDENT, BOARD OF DIRECTORS
YAVAPAÏ-PRESCTT INDIAN TRIBE

ATTEST:

[Signature]
SECRETARY/TREASURER, BOARD OF DIRECTORS
YAVAPAÏ-PRESCTT INDIAN TRIBE
February 24, 1998

United States Department of the Interior
Bureau of Indian Affairs
Phoenix Area Office
P. O. Box 10
Phoenix, Arizona 85001

Attention:
Catherine E. Wilson, Chairperson
Yavapai-Prescott Implementation Team
Branch of Land and Water Resources

Enclosed herewith are the two originals of the "Agreement" dully executed by the Board of Directors, Yavapai-Prescott Indian Tribe pursuant to and in accordance with the "Agreement for Payment of Monies from the Verde River Basin Water Fund" required by Section 106 (d) of the Yavapai-Prescott Indian Tribe Water Rights Settlement Act, Public Law 103-434 (October 31, 1994). Also enclosed, is a copy of Resolution No. 98-05 of the Governing Body of the Yavapai-Prescott Indian Tribe authorizing the President to sign said "Agreement" and to request transfer of the Tribes Verde River Basin Water Funds into Tribal accounts and control.

Request that the Tribe's Verde River Basin Water Funds be transferred to the Tribe's Trust Fund at Norwest Bank, Account No. 122105278-8002002882.

Sincerely,

[Signature]

Stan Rice, Jr.
President

RECEIVED
FEB 27 1998

PHOENIX AREA OFFICE
LAND AND WATER RESOURCES

530 E. MERRITT  Prescott, AZ 86301-2038  Phone 520-445-8790  FAX 520-778-9445
February 24, 1998

United States Department of the Interior
Bureau of Indian Affairs
Phoenix Area Office
P. O. Box 10
Phoenix, Arizona 85001

Attention:
Catherine E. Wilson, Chairperson
Yavapai- Prescott Implementation Team
Branch of Land and Water Resources

Enclosed herewith are the two originals of the "Agreement" dully executed by the Board of Directors, Yavapai-Prescott Indian Tribe pursuant to and in accordance with the "Agreement for Payment of Monies from the Verde River Basin Water Fund" required by Section 106 (d) of the Yavapai-Prescott Indian Tribe Water Rights Settlement Act, Public Law 103-434 (October 31, 1994). Also enclosed, is a copy of Resolution No. 98-05 of the Governing Body of the Yavapai-Prescott Indian Tribe authorizing the President to sign said "Agreement" and to request transfer of the Tribes Verde River Basin Water Funds into Tribal accounts and control.

Request that the Tribe's Verde River Basin Water Funds be transferred to the Tribe's Trust Fund at Norwest Bank, Account No. 122105278-8002002882.

Sincerely,

Stan Rice, Jr.
President

SRJ:KN:nes

RECEIVED
FEB 27 1998

PHOENIX AREA OFFICE
LAND AND WATER RESOURCES
AGREEMENT FOR THE PAYMENT OF MONIES FROM THE VERDE RIVER BASIN WATER FUND (CITY OF PRESCOTT)

This Agreement for the Payment of Monies from the Verde River Basin Water Fund ("Agreement") is entered into this 29th day of January 1998, between the City of Prescott, Arizona ("Prescott") and the Secretary of the Interior ("Secretary") pursuant to and in accordance with the Yavapai-Prescott Indian Tribe Water Rights Settlement Act of 1994, Public Law 103-434, (October 31, 1994) ("Act").

RECITALS

WHEREAS, the Secretary has established the Verde River Basin Water Fund ("The Fund") pursuant to and in accordance with the Act to hold in trust certain monies, including, but not limited to, monies obtained from the assignment or purchase of the Central Arizona Project ("CAP") subcontract of Prescott for ultimate payment to Prescott; and

WHEREAS, Prescott has assigned its CAP subcontract providing for an allocation of Central Arizona Project water to the City of Scottsdale ("Scottsdale"); and

WHEREAS, Scottsdale has deposited $3,394,390 into The Fund, for the benefit of Prescott, in consideration of the conveyance of Prescott’s CAP allocation to Scottsdale; and

WHEREAS, on June 27, 1996, the Secretary caused to be published in the Federal Register a statement of findings as provided in Section 112(a) of the Act; and

WHEREAS, the Act directs the Secretary, following publication of the statement of findings, to disburse from The Fund to Prescott those monies obtained from the assignment or purchase of Prescott’s CAP subcontract and deposited into The Fund, including all interest due and received thereon, ("Prescott Fund Proceeds"), provided the Secretary and Prescott first execute an agreement which complies with the requirements of Section 106(d) of the Act; and

WHEREAS, the Secretary and Prescott wish to enter into an agreement pursuant to and in accordance with the requirements of Section 106(d) of the Act; and

THEREFORE, in consideration of the following terms, conditions, and promises, the Secretary and Prescott agree as follows:
1. Within thirty (30) days of the execution of the Agreement, Prescott shall establish a trust account ("Prescott Trust Account") into which the Prescott Fund Proceeds may be deposited and administered in accordance with the Act.

2. Within thirty days of receiving written notice from Prescott that the Prescott Trust Account has been established, the Secretary shall cause to be disbursed from The Fund, the Prescott Fund Proceeds for deposit into the Prescott Trust Account. The notice informing the Secretary of the establishment of the Prescott Trust Account shall include: the name and address of the institution where said account has been established and will be maintained; the name and account number of said account; the identification and phone number of a contact person at the institution; and instructions for depositing the Prescott Fund Proceeds into the Prescott Trust Account.

3. Prescott shall not use any of the Prescott Fund Proceeds deposited into the Prescott Trust Account for any purpose other than those purposes set forth in Section 107(a) of the Act.

4. Prescott acknowledges and understands that 107(c) of the Act prohibits it from distributing any amount of the Prescott Fund Proceeds as a dividend or per capita payment to any constituent, member, shareholder, director or employee of Prescott.

5. Prescott shall provide for yearly audits of the Prescott Trust Account, based on the fiscal year July 1 through June 30, to determine compliance with Sections 107(a) and 107(c) of the Act. Prescott agrees to provide the Secretary with a copy of each yearly audit by December 31 of each year commencing in 1998. The Secretary shall consult with the Bureau of Indian Affairs, Phoenix Area Office, Branch of Land and Water Resources, concerning each annual audit and the determination of compliance with Section 107 of the Act.

6. In the event the Secretary determines that Prescott has used any Prescott Fund Proceeds for a purpose or purposes not within Section 107, Prescott understands and agrees that it shall repay to The Fund that amount, with interest at the Treasury Overnight interest rate, used in a manner not authorized by the Act. Prescott and the Secretary agree and understand that the Secretary may consider any and all information available to him, including, but not limited to, the audit(s) described in paragraph 5 of this Agreement, to determine whether Prescott has used any Prescott Fund Proceeds in a manner inconsistent with Section 107 of the Act.

7. In the event Prescott repays any Prescott Fund Proceeds to the Fund pursuant to Section 106(d) of the Act and paragraph 6 of this Agreement, the Secretary and Prescott agree that the Secretary's disbursement of said amount to Prescott for deposit into the Prescott Trust Account, shall be subject to the terms of the Act and this Agreement.

8. Prescott acknowledges and understands that the Act provides that effective with the deposit of the Prescott Fund Proceeds into the Prescott Trust Account, the United States shall not be liable for any claim or cause of action arising from the use of the Prescott Fund Proceeds by Prescott.
9. Pursuant to A.R.S. Section 38-511, Prescott may cancel this Agreement, if any person significantly involved in initiating, negotiating, securing, drafting or creating the Agreement on behalf of Prescott is, at any time while the Agreement or any extension of the Agreement is in effect, an employee or agent of any other party to the Agreement in any capacity or a consultant to any other party of the Agreement with respect to the subject matter of the Agreement. In the foregoing event, Prescott further elects to recoup any fee or commission paid or due to any person significantly involved in initiating, negotiating, securing, drafting or creating this Agreement on behalf of Prescott from any other party to the Agreement arising as a result of this Agreement.

Notwithstanding any cancellation of the Agreement by Prescott pursuant to A.R.S. Section 38-511, Prescott shall not be relieved of any obligation to comply with the terms of the Act, including Section 107 thereof.

10. Any notice or document required to be given to the Secretary under the terms and conditions of this Agreement shall be in writing and delivered in person or mailed, postage prepaid, by certified mail, return receipt requested, to the following address:

Office of Trust Funds Management
Attention: Chief, Division of Quality Assurance
505 Marquette N.W., Suite 1000
Albuquerque, New Mexico 87102
(502) 248-5751

IN WITNESS WHEREOF, the parties have executed and delivered this Agreement as of the date first above written.

SECRETARY OF THE INTERIOR
By: John M. Wills
Paul Homan
Special Trustee for American Indians

CITY OF PRESCOTT
By: Paul S. Daly
PAUL S. DALY, Mayor

ATTEST:

MARIE L. WATSON
City Clerk

APPROVED AS TO FORM:

JOHN R. MOFFITT
City Attorney
February 4, 1998

Ms. Cathy Wilson
Chair, Yavapai-Prescott Indian Tribe Water
   Rights Settlement Act Implementation Team
PO Box 10
Phoenix, AZ 85001

Re: Agreement for Payment of Monies from the Verde River
   Basin Water Fund

Dear Cathy:

Enclosed please find two (2) original executed agreements, as
approved by the Prescott City Council on February 3, 1998. Would
you please obtain original signatures and return one original to me
for our records.

Also, would you please advise as to whom we should contact in order
to make arrangements to have the monies transferred into our local
trust account.

As always, thanks for your continued cooperation.

Very truly yours,

CITY OF PRESCOTT
LEGAL DEPARTMENT

JOHN R. MOFFITT
City Attorney

cc: Marie Watson
    Mark Woodfill