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## Yavapai-Prescott Indian Tribe Water Rights Settlement of June 29, 1995

Yavapai-Prescott Indian Tribe et al

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Yavapai-Prescott Indian Tribe Water Rights Settlement (June 29, 1995)

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YAVAPAI-PRESCOTT INDIAN TRIBE  
WATER RIGHTS SETTLEMENT AGREEMENT

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## EXHIBITS

2.1	YAVAPAI-PRESCOTT INDIAN TRIBE WATER RIGHTS SETTLEMENT ACT OF 1994 . . . . .
2.15	WATER SERVICE AGREEMENT BETWEEN YAVAPAI- PRESCOTT INDIAN TRIBE AND CITY OF PRESCOTT . . . . .
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9.1	WAIVER AND RELEASE . . . . .
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## 1 AGREEMENT

2  
3 THIS AGREEMENT, dated as of June 29, 1995, is entered into  
4 by and between the United States of America, the State of Arizona, the  
5 Yavapai-Prescott Indian Tribe, the City of Prescott and the Chino  
6 Valley Irrigation District.

7 1.0 RECITALS

8 1.1 The representatives of the United States of America, the  
9 State of Arizona, the Yavapai-Prescott Indian Tribe, the City of  
10 Prescott and the Chino Valley Irrigation District have agreed to  
11 permanently settle the water rights of the Yavapai-Prescott Indian  
12 Tribe and its members, to finally resolve certain pending litigation  
13 on water rights.

14 1.2 Section 2(a)(1) of the Yavapai-Prescott Indian Tribe Water  
15 Rights Settlement Act of 1994, Pub. L. 103-434, 108 Stat. 4526 (1994),  
16 states that it is the policy of the United States, in fulfillment of  
17 its trust responsibility to Indian tribes, to promote Indian self-  
18 determination and economic self-sufficiency, and to settle, wherever  
19 possible, the water rights claims of Indian tribes without lengthy and  
20 costly litigation.

21 1.3 The objective of this settlement is to resolve certain  
22 outstanding water-related litigation and to settle, once and for  
23 always, the water rights of the Yavapai-Prescott Indian Tribe and its  
24 members based upon Federal, State and other laws by confirming to the  
25 Yavapai-Prescott Indian Tribe sufficient water from various sources  
26 to develop lands within the Yavapai-Prescott Indian Tribe's  
Reservation.

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

4 2.0 DEFINITIONS

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

7 2.1 "Act" means the Yavapai-Prescott Indian Tribe Water Rights  
8 Settlement Act of 1994, Pub. L. 103-434, 108 Stat. 4526 (1994). The  
9 Act is attached as Exhibit 2.1 to this Agreement.

10 2.2 "CAP" means the Central Arizona Project, a reclamation  
11 project authorized under title III of the Colorado River Basin Project  
12 Act of 1968 (43 U.S.C. 1521 et seq.).

13 2.3 "CVID" means the Chino Valley Irrigation District, an  
14 irrigation district organized under the laws of the State of Arizona.

15 2.4 "Divert" means to remove surface water from its natural  
16 course or location by means of a ditch, canal, flume, bypass,  
17 pipeline, conduit, well, pump or other act of man, either (1)  
18 downstream of the gauging station as more particularly identified in  
19 Section 11(d) of the Act; or (2) upstream of the gauging station, so  
20 long as the Tribe provides, at its own expense, other reasonable means  
21 of measuring the rate and quantity of water it diverts. "Diversion"  
22 means the act of diverting.

23 2.5 "Effluent" means water which, after being diverted as  
24 surface water or withdrawn as groundwater, has been used for domestic,  
25 municipal or industrial purposes and which is available for reuse for  
26

1 any purpose, whether or not the water has been treated to improve its  
2 quality.

3 2.6 "Fund" means the Verde River Basin Water Fund, a federal  
4 fund to be created pursuant to section 6(a) of the Act

5 2.7 "Gila River Adjudication" means that action pending in the  
6 Superior Court of the State of Arizona in and for the County of  
7 Maricopa styled as In Re the General Adjudication of All Rights to Use  
8 Water in the Gila River System and Source, W-1 (Salt), W-2 (Verde),  
9 W-3 (Upper Gila) and W-4 (San Pedro), including subsequent enforcement  
10 proceedings therein.

11 2.8 "Groundwater" means subsurface water which is not defined  
12 as surface water or effluent pursuant to Subparagraphs 2.13 and 2.5  
13 hereof.

14 2.9 "Parties" means the entities represented by the signatories  
15 to this Agreement.

16 2.10 "Prescott" means the City of Prescott, an Arizona municipal  
17 corporation.

18 2.11 "Prescott Active Management Area" means the Active  
19 Management Area, established pursuant to Arizona law and encompassing  
20 the little Chino and upper Agua Fria sub-basins, wherein the  
21 groundwater management goal is to achieve and thereafter maintain a  
22 long-term balance between annual groundwater withdrawals and annual  
23 natural and artificial groundwater recharge by the year 2025 or such  
24 earlier date as may be determined by the director of the Arizona  
25 Department of Water Resources.  
26

2.12 "Reservation" means the reservation established by the Act of June 7, 1935, 49 Stat. 332, and the Act of May 18, 1956, 70 Stat. 157, for the Yavapai-Prescott Indian Tribe.

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.

1 C. A Memorandum of Understanding between the Yavapai-  
2 Prescott Indian Tribe and the State of Arizona, a copy of which is  
3 attached hereto as Exhibit 7.1 and incorporated herein by this  
4 reference.

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

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

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

15 4.0 WATER ENTITLEMENT

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

19 4.1 In addition to water supplies provided to the Tribe pursuant  
20 to Subparagraphs 4.2, 4.3 and 4.4 hereof, Reservation water users  
21 shall be provided with water service from Prescott pursuant to the  
22 Water Service Agreement, as further described in Paragraph 5.0 hereof  
23 and the Water Service Agreement. The Water Service Agreement provides  
24 for water service to Reservation users as Prescott customers with  
25 priority access to five hundred and fifty (550) acre-feet per annum,  
26 hereinafter "AFA", during times of severe shortage.

1 4.2 In addition to water supplies provided to the Tribe pursuant  
2 to Subparagraphs 4.1, 4.3 and 4.4 hereof, the Tribe shall have the  
3 right to beneficially use on the Reservation, and to store and divert  
4 on or off the Reservation, up to one thousand (1,000) AFA, of the  
5 right to Granite Creek surface water established by CVID pursuant to  
6 Arizona law and to be confirmed in the Gila River Adjudication or to  
7 permit the diversion, treatment and delivery by Prescott of a portion  
8 of this water to facilitate deliveries of absolute priority water by  
9 Prescott pursuant to Subparagraph 5.1 of the Water Service Agreement,  
10 as further described in paragraph 6.0 hereof. The priority of the  
11 Tribe's right to such Granite Creek water shall be the priority for  
12 that water as determined by the confirmation of CVID's right to  
13 Granite Creek water in the Gila River Adjudication.

14 4.3 In addition to water supplies provided to the Tribe pursuant  
15 to Subparagraphs 4.1, 4.2 and 4.4 hereof, the Tribe shall have the  
16 right to withdraw groundwater beneath the Reservation for on-  
17 Reservation beneficial use in accordance with any groundwater  
18 management plan which may be developed by the Tribe pursuant to  
19 Section 11(c) of the Act and Paragraph 7.0 hereof. The parties to  
20 this Agreement, except as provided in Section 13(a) and 13(b) of the  
21 Act, recognize, ratify, confirm and declare to be valid the Tribe's  
22 right and entitlement to the on-Reservation beneficial use of all  
23 groundwater beneath the Reservation, in accordance with any  
24 groundwater management plan developed by the Tribe pursuant to Section  
25 11(c) of the Act and Paragraph 7.0 hereof, and agree to not object to,  
26 dispute or challenge, in the Gila River Adjudication or in any other

1 judicial or administrative proceeding, this right and entitlement.

2 4.4 In addition to water supplies provided to the Tribe pursuant  
3 to Subparagraphs 4.1, 4.2 and 4.3 hereof, effluent generated on the  
4 Reservation may either be used on the Reservation or sold to off-  
5 Reservation users, in accordance with the Water Service Agreement.  
6 The parties to this Agreement, except as provided in Sections 13(a)  
7 and 13(b) of the Act, recognize, ratify, confirm and declare to be  
8 valid the Tribe's right and entitlement to use and/or sell to third  
9 parties all effluent generated by Reservation water users, in  
10 accordance with the Water Service Agreement, and agree to not object  
11 to, dispute or challenge, in the Gila River Adjudication or in any  
12 other judicial or administrative proceeding, this right and  
13 entitlement. All use of Effluent off the Reservation shall be in  
14 accordance with applicable state and federal law.

15 5.0 WATER SERVICE AGREEMENT

16 5.1 The Water Service Agreement between the Tribe and Prescott,  
17 attached as Exhibit 2.15 hereof, is hereby incorporated into and made  
18 a part hereof.

19 5.2 The parties to this Agreement, except as provided in  
20 Sections 13(a) and 13(b) of the Act, recognize, ratify, confirm and  
21 declare to be valid Prescott's rights and entitlements to water from  
22 the Verde and Gila River watersheds and agree to not object to,  
23 dispute or challenge, in the Gila River Adjudication or in any other  
24 judicial or administrative proceeding, such rights and entitlements,  
25 which rights and entitlements are evidenced by, described, stated,  
26 claimed, confirmed or established in the following documents and

1 instruments:

2 a. Judgment, Chino Valley Irrigation Dist. v. City of  
3 Prescott, No. 12,681 (Yavapai County Super. Ct., June 28, 1931).

4 b. Town of Chino Valley v. City of Prescott, 131 Ariz. 78,  
5 638 P.2d 1324 (1981).

6 c. Statement of Claimant Form for Other Uses No. 39-05-  
7 50068, In Re the General Adjudication of All Rights to Use Water in  
8 the Gila River System and Source, Nos. W-1 through W-4 (Maricopa  
9 County Super. Ct.).

10 d. Statement of Claimant Form for Other Uses No. 39-05-  
11 55003, In Re the General Adjudication of All Rights to Use Water in  
12 the Gila River System and Source, Nos. W-1 through W-4 (Maricopa  
13 County Super. Ct.).

14 e. Certificate of Water Right No. 1659 (Application No.  
15 R-432, Permit No. R-222).

16 f. Certificate of Water Right No. 3711 (Application No.  
17 A-4584, Permit No. A-3032).

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

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

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

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

26 k. Water Right Registration Act Statement of Claim of

1 Right to Use Public Waters of the State No. 36-43929.

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

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

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

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

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

12 q. Right to Withdraw Groundwater, Service Area Right No.  
13 56-003017.0000.

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

16 5.3 The parties to this Agreement, except as provided in  
17 Sections 13(a) and 13(b) of the Act, recognize, ratify, confirm and  
18 declare to be valid the Tribe's rights and entitlements under the  
19 Water Service Agreement and agree to not object to, dispute or  
20 challenge, in the Gila River Adjudication or in any other judicial or  
21 administrative proceeding, such rights and entitlements.

22 5.4 The parties to this Agreement, except as provided in  
23 Sections 13(a) and 13(b) of the Act, further recognize, ratify,  
24 confirm and declare to be valid the Tribe's conditional right and  
25 entitlement, under the Water Service Agreement, to elect to assume  
26 Reservation water service in the circumstances listed in Subparagraph

1 8.5 of the Water Service Agreement and agree, in the event of such an  
2 assumption, to not object to, dispute or challenge, in the Gila River  
3 Adjudication or in any other judicial or administrative proceeding,  
4 the Tribe's right and entitlement to utilize the specified Type 2  
5 Grandfathered Groundwater Rights or the equivalent thereof to withdraw  
6 groundwater in the Prescott Active Management Area for delivery to and  
7 use on the Reservation in accordance with the State of Arizona's  
8 Groundwater Code.

9 6.0 GRANITE CREEK WATER

10 6.1 The parties to this Agreement, except as provided in  
11 Sections 13(a) and 13(b) of the Act, recognize, ratify, confirm and  
12 declare to be valid CVID's rights and entitlements to water from the  
13 Verde River watershed and agree to not object to, dispute or  
14 challenge, in the Gila River Adjudication or in any other judicial or  
15 administrative proceeding, such rights and entitlements, which rights  
16 and entitlements are evidenced by, described, stated, claimed,  
17 confirmed or established in the following documents and instruments:

18 a. Judgment, Chino Valley Irrigation Dist. v. City of  
19 Prescott, No. 12,681 (Yavapai County Super. Ct., June 28, 1931).

20 b. Judgment and Decree, Rees v. Chino Valley Irrigation  
21 Dist., No. 20,219 (Yavapai County Super. Ct., Mar. 19, 1958).

22 c. Judgment and Decree, Ericson v. Chino Valley Irrigation  
23 Dist., No. 25,649 (Yavapai County Super. Ct., May 11, 1971).

24 d. Judgment, Salt River Valley Water Users' Ass'n v. Chino  
25 Valley Irrigation Dist., No. 22,088 (Yavapai County Super. Ct. Nov.  
26 22, 1971).

1 e. Statement of Claimant Form for Domestic Use No. 39-05-  
2 46143, In Re the General Adjudication of All Rights to Use Water in  
3 the Gila River System and Source, Nos. W-1 through W-4 (Maricopa  
4 County Super. Ct.).

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

9 g. Statement of Claimant Form for Irrigation Use No. 39-  
10 05-46145, In Re the General Adjudication of All Rights to Use Water  
11 in the Gila River System and Source, Nos. W-1 through W-4 (Maricopa  
12 County Super. Ct.).

13 h. Certificate of Water Right No. 1673.

14 i. Certificate of Water Right No. 1674.

15 j. Certificate of Water Right No. 593.

16 k. Certificate of Water Right No. 594.

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

19 m. Permit to appropriate No. 33-86560, to the extent the  
20 exercise of such right is not adverse to the rights of Prescott  
21 pursuant to Arizona Public Service Co. v. Long, 160 Ariz. 409, 773  
22 P.2d 988 (1989), or the Tribe pursuant to the Water Service Agreement  
23 and Subparagraph 4.4 of this Agreement.

24 n. Certificate of Irrigation Grandfathered Right No. 57-  
25 003001.0000.  
26

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,

1 diversion and use of surface water by the Tribe pursuant to this  
2 Subparagraph 6.2 shall be as determined by the confirmation of CVID's  
3 right to Granite Creek water in the Gila River Adjudication. Any  
4 surface water not stored, diverted or used by the Tribe in a year  
5 shall be available for use by CVID, and the Tribe's annual entitlement  
6 under this Subparagraph 6.2 shall not be carried over from year to  
7 year; provided, however, that: (i) any water stored by the Tribe  
8 during a given year may be left in storage and/or consumptively used  
9 by the Tribe in subsequent years without such storage and/or use being  
10 counted against the Tribe's annual entitlements for such subsequent  
11 years; (ii) if the flow of Granite Creek is insufficient in any year  
12 to permit the Tribe to divert five hundred and fifty (550) AFA  
13 pursuant to this Subparagraph 6.2, then an amount equal to the  
14 difference between the amount the Tribe actually diverts in that year  
15 and its five hundred and fifty (550) AFA Minimum Annual Entitlement  
16 shall be carried forward from year to year (but not to exceed four  
17 years) as a Deficiency until the Tribe is able to recover such  
18 Deficiency pursuant to this Subparagraph 6.2; and (iii) the Tribe's  
19 total Maximum Annual Entitlement pursuant to clause (b) of the first  
20 sentence of this Subparagraph 6.2 shall be increased in any given year  
21 by an amount equal to the sum of the Deficiencies carried forward from  
22 the preceding four years. If the Tribe is permitted to divert, and  
23 does divert, an amount in excess of one thousand (1,000) AFA pursuant  
24 to this Subparagraph 6.2, then the Tribe's accumulated Deficiencies  
25 shall be reduced by an amount equal to such excess. All such excess  
26 diversions shall be applied to the earliest deficiency still being

1 carried forward. Deficiencies older than four years shall lapse.

2 6.3 During such times as the Tribe receives water from Prescott  
3 to which it has an absolute prior right (herein referred to as  
4 "absolute priority water"), as more fully described in Subparagraph  
5 5.1 of the Water Service Agreement, Prescott may elect, after  
6 receiving the Tribe's permission, to divert from Granite Creek a  
7 quantity of water equivalent to the absolute priority water delivered  
8 to the Reservation. Any such diversion by Prescott shall be in lieu  
9 of diversion by the Tribe of a corresponding portion of the Tribe's  
10 Granite Creek right as described in Subparagraph 6.2 hereof, and shall  
11 be subject to the same restrictions applicable to diversions by the  
12 Tribe under Subparagraph 6.2 hereof.

13 6.4 CVID's obligations pursuant to this Paragraph 6.0 shall be  
14 binding upon its successors and assigns. The parties to this  
15 Agreement agree that, notwithstanding a change of circumstances such  
16 as the termination of CVID's corporate existence, the Tribe's  
17 entitlement pursuant to this Paragraph 6.0 shall remain in full force  
18 and effect.

19 6.5 The parties to this Agreement, except as provided in  
20 Sections 13(a) and 13(b) of the Act, recognize, ratify, confirm and  
21 declare to be valid the Tribe's right and entitlement to store, divert  
22 and beneficially use CVID surface water pursuant to this Paragraph 6.0  
23 and agree to not object to, dispute or challenge, in the Gila River  
24 Adjudication or in any other judicial or administrative proceeding,  
25 this right and entitlement.  
26

1 7.0 REGULATION OF TRIBAL WATER RESOURCES

2 7.1 As provided in Section 11(c) of the Act, the Tribe shall  
3 establish a groundwater management plan for the Reservation which,  
4 except to be consistent with the Water Service Agreement, this  
5 Agreement and the Act, will be compatible with the groundwater  
6 management plan in effect for the Prescott Active Management Area and  
7 will include an annual information exchange with the Arizona  
8 Department of Water Resources. In establishing a groundwater  
9 management plan pursuant to this Paragraph, the Tribe will enter into  
10 a Memorandum of Understanding with the Arizona Department of Water  
11 Resources for consultation. The Memorandum of Understanding will be  
12 in the form set out in Exhibit 7.1 to this Agreement.

13 7.2 Notwithstanding other law, the Tribe may establish a Tribal  
14 water code, consistent with the above-described groundwater management  
15 plan, under which the Tribe will manage, regulate, and control the  
16 water resources granted it in the Act, this Agreement, and the Water  
17 Service Agreement; provided, however, that such management, regulation  
18 and control shall not authorize any action inconsistent with the trust  
19 ownership of the Tribe's water resources.

20 8.0 ACQUISITION OF CAP CONTRACTS AND ESTABLISHMENT OF TRUST

21 ACCOUNTS

22 8.1 In accordance with Section 6(d) of the Act, the Tribe hereby  
23 agrees to establish a trust account into which revenues from the Fund  
24 will be deposited. Revenues deposited into the Fund to the credit of  
25 the Tribe will be derived from the sale of the Tribe's CAP contract  
26 entitlement in accordance with Section 5 of the Act.

1           A.    The Tribe hereby agrees that revenues from the trust  
2 account may only be used to defray the Tribe's water service costs  
3 under the Water Service Agreement or to develop and maintain  
4 facilities for water or Effluent use on the Reservation. Any funds  
5 withdrawn from the trust account but not used for the purposes stated  
6 herein shall be returned to the Fund, with interest at the Federal  
7 Reserve Discount Rate (the interest rate charged on loans to  
8 depository institutions by the Federal Reserve Banks) in effect from  
9 time to time.

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

15       8.2       In accordance with Section 6(d) of the Act, Prescott hereby  
16 agrees to establish a trust account into which revenues from the Verde  
17 River Basin Water Fund will be deposited. Revenues deposited to the  
18 Fund to the credit of Prescott will be derived from the sale of  
19 Prescott's CAP contract entitlement in accordance with Section 5 of  
20 the Act.

21           A.    Prescott hereby agrees that revenues from the trust  
22 account may only be used to defray expenses associated with the  
23 investigation, acquisition or development of alternative sources of  
24 water to replace the CAP water relinquished under the Act.  
25 Alternative sources shall be understood to include, but not be limited  
26 to, retirement of agricultural land and acquisition of associated

1 water rights, development of ground water resources outside the  
2 Prescott Active Management Area established pursuant to the laws of  
3 the State of Arizona and artificial recharge; except that none of the  
4 moneys paid to Prescott may be used for construction or renovation of  
5 the city's existing waterworks or water delivery system. Any funds  
6 withdrawn from the trust account but not used for the purposes stated  
7 herein shall be returned to the Fund, with interest at a rate equal  
8 to the average rate of interest paid on governmental deposits by the  
9 Arizona State Treasurer's Pool during the period of time that the  
10 monies were erroneously expended from the trust account.

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

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

22 9.0 WAIVER OF CLAIMS

23 9.1 Except as provided in Subparagraph 9.2 hereof, the Tribe,  
24 on behalf of itself and its members, and the United States shall  
25 execute a waiver and release of:  
26

1           A. Any and all past and present claims of water rights or  
2 injuries to water rights (including water rights in groundwater,  
3 surface water and effluent) for lands within the Reservation, from  
4 time immemorial to the date of execution of such waiver and release,  
5 which the Tribe and/or its members may have, against the United  
6 States, the State of Arizona or any agency or political subdivision  
7 thereof, or any other person, corporation or municipal corporation,  
8 arising under the laws of the United States or the State of Arizona.

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

17           C. Any and all past, present and future claims of water  
18 rights or injuries to water rights (including water rights in  
19 groundwater, surface water and effluent) for lands outside of the  
20 exterior boundaries of the Reservation for claims based upon  
21 aboriginal occupancy, which the Tribe and/or its members may have,  
22 against the United States, the State of Arizona or any agency or  
23 political subdivision thereof, or any other person, corporation or  
24 municipal corporation, arising under the laws of the United States or  
25 the State of Arizona. The waiver and release will be in the form set  
26 out in Exhibit 9.1 to this Agreement.

1 9.2 Notwithstanding the execution by the Tribe of the waiver and  
2 release described in Subparagraph 9.1 hereof, the Tribe, its members,  
3 and the United States for their benefit, shall retain the right to  
4 assert the following claims:

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

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

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

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

21 9.3 Any entitlement to water of any individual member of the  
22 Tribe for lands within the Reservation shall be satisfied out of the  
23 water resources provided to the Tribe in this Agreement.

24 9.4 Except as provided in Paragraph 9.2 hereof, the United  
25 States shall not assert any claim against the State of Arizona and any  
26 agency or political subdivision thereof or any other person,

1 corporation, or municipal corporation, in its own right or for the  
2 benefit of the Tribe and its members based upon (1) water rights or  
3 injuries to water rights of the Tribe and its members; or (2) water  
4 rights or injuries to water rights held by the United States for the  
5 benefit of the Tribe and its members.

6 9.5 The parties shall file a stipulation and form of judgment  
7 in the Gila River Adjudication in the form of Exhibit 9.5 hereto. The  
8 United States or the Tribe shall be permitted to support any claim of  
9 any party to this Agreement filed in the Gila River Adjudication from  
10 which the Tribe's water rights under this Agreement are derived.

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

22 9.7 Nothing herein shall affect the water rights or claims  
23 related to any trust allotment located outside the exterior boundaries  
24 of the Reservation of any member of the Tribe; provided, however, that  
25 any water rights determined to exist for such allotments shall not be  
26 exercised for use on the Reservation.

1 9.8 Nothing herein shall be deemed to recognize or establish any  
2 right of a member of the Tribe to water on the Tribe's Reservation.

3 9.9 Nothing herein shall prevent the Tribe from participating  
4 with other entities in further activities to augment the water supply  
5 available to the Prescott Active Management Area and the Granite Creek  
6 watershed. In addition to the water provided to the Tribe under this  
7 Agreement and the Water Service Agreement, the Tribe may, consistent  
8 with state and federal law, acquire rights to water pursuant to state  
9 law or by contract with the United States; provided, however, that no  
10 rights so acquired shall be based upon claims waived pursuant to this  
11 Paragraph 9.0 and Section 10 of the Act, nor shall the acquisition of  
12 any such rights vitiate the Waiver and Release of Claims executed by  
13 the Tribe and the United States pursuant to this Paragraph 9.0 and  
14 Section 10 of the Act.

15 10.0 ENFORCEABILITY DATE AND RELATED MATTERS

16 10.1 This Agreement shall be effective and binding when it has  
17 been executed by all parties hereto and when the parties to this  
18 Agreement have executed all exhibits to the Agreement which call for  
19 their signatures. Other than to take all steps described in this  
20 Subparagraph 10.1 to occur, no party to this Agreement shall be  
21 required to perform any of the obligations, or be entitled to receive  
22 any of the benefits, under the Agreement or under any of the Exhibits  
23 hereto until such time as the waivers authorized in Section 10(b) of  
24 the Act have become effective pursuant to Section 12(a) of the Act,  
25 which date is referred to herein as the "Enforceability Date". In the  
26 event the waivers authorized in Section 10(b) of the Act have not

1 become effective by December 31, 1995, this Agreement shall be of no  
2 further force or effect.

3 10.2 Exhibit 2.1 hereto is the Act, which authorizes the Federal  
4 action required to carry out this Agreement. Any act of Congress  
5 which materially amends the Act set forth in Exhibit 2.1 hereto, as  
6 it affects this Agreement, prior to the Enforceability Date of this  
7 Agreement, without the written consent of the parties adversely  
8 affected by such amendment, shall relieve all parties to this  
9 Agreement of their obligations hereunder.

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

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

18 B. Permit the Tribe and its members, and the United States  
19 for their benefit, to assert in the Gila River Adjudication claims for  
20 water rights and entitlements in excess of the Tribe's rights and  
21 entitlements under this Agreement and the Water Service Agreement, and  
22 the other parties to this Agreement agree not to assert any defense  
23 against the Tribe and the United States; however, the Tribe and the  
24 United States agree that a reserved right awarded to the Tribe will  
25 be satisfied as provided in this Agreement and the Water Service  
26 Agreement, and that if a right in excess of the Tribe's rights and

1 entitlements under this Agreement and the Water Service Agreement is  
2 awarded, the excess of such right will not be exercised, in any phase  
3 of the Gila River Adjudication or any subsequent proceedings, against  
4 junior rights held by other parties to this Agreement.

5 10.4 In the event the waivers authorized in Section 10(b) of the  
6 Act have become effective and a court of competent jurisdiction has  
7 permanently ordered any single party to this Agreement not to perform  
8 an obligation to deliver water to the Tribe as provided in this  
9 Agreement and no further appeal may be taken,

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

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

18 C. The Tribe and its members, and the United States for  
19 their benefit, may assert in the Gila River Adjudication claims for  
20 water rights and entitlements in excess of the Tribe's rights and  
21 entitlements under this Agreement and the Water Service Agreement, and  
22 the other parties to this Agreement agree not to assert any defense  
23 against the Tribe and the United States; however, the Tribe and the  
24 United States agree that a reserved right awarded to the Tribe will  
25 be satisfied as provided in this Agreement and the Water Service  
26 Agreement, to the extent not precluded by an order of a court of

1 competent jurisdiction as provided in this Subparagraph 10.4, and that  
2 if a right in excess of the Tribe's rights and entitlements under this  
3 Agreement and the Water Service Agreement is awarded, the excess of  
4 such right will not be exercised, in any phase of the Gila River  
5 Adjudication or any subsequent proceedings, against junior rights held  
6 by other parties to this Agreement.

7 10.5 In the event the waivers authorized in Section 10(b) of the  
8 Act have become effective and a court of competent jurisdiction has  
9 permanently ordered more than one of the parties to this Agreement not  
10 to perform an obligation to deliver water to the Tribe as provided in  
11 this Agreement and no further appeal may be taken, then, unless  
12 otherwise agreed by the Tribe, this Agreement shall be null and void  
13 and, except as provided in Subparagraph 9.6 hereof and in this  
14 Subparagraph 10.5, all parties shall be relieved of their obligations  
15 under this Agreement.

16 11.0 STATE OF ARIZONA CONTRIBUTION

17 11.1 Pursuant to Paragraph 8.0, Section 6(d) of the Act and by  
18 contract with the Secretary, the Tribe shall establish a trust account  
19 into which funds appropriated pursuant to the Act and this Agreement  
20 shall be deposited for use by the Tribe consistent with Section 7(b)  
21 of the Act.

22 11.2 Upon establishment of the trust account pursuant to  
23 Subparagraph 11.1 hereof, the Tribe shall so notify the State of  
24 Arizona. Within one calendar year of such notice, but not later than  
25 December 31, 1995, the State of Arizona, subject to appropriation by  
26 the Legislature, shall deposit or cause to be deposited \$200 000.00

1 into the trust account established pursuant to Subparagraph 11.1  
2 hereof.

3 11.3 In the event the waivers authorized in Section 10(b) of the  
4 Act have not become effective by December 31, 1995, the Tribe shall  
5 return to the State of Arizona any funds appropriated and deposited  
6 by the State of Arizona into the Tribe's trust account pursuant to  
7 Subparagraph 11.2 hereof.

8 12.0 OTHER PROVISIONS

9 12.1 Cooperation with Tribal Water Development. The State of  
10 Arizona, Prescott and CVID will cooperate with the Tribe in obtaining  
11 any necessary Federal approval required for the Tribe's enjoyment of  
12 the rights and entitlements provided by this Agreement and the Water  
13 Service Agreement, including their good offices to assist in obtaining  
14 the cooperation of others necessary for such approvals. The United  
15 States, Prescott and CVID will cooperate with the Tribe in obtaining  
16 any necessary State approval required for the Tribe's enjoyment of the  
17 rights and entitlements provided by this Agreement and the Water  
18 Service Agreement, including their good offices to assist in obtaining  
19 the cooperation of others necessary for such approvals.

20 12.2 Cancellation by State, Prescott and CVID. The state,  
21 Prescott or CVID may cancel this Agreement without penalty or further  
22 obligation pursuant to A.R.S. § 38-511, if any person significantly  
23 involved in initiating, negotiating, securing, drafting or creating  
24 this Agreement on behalf of the state, Prescott or CVID is an employee  
25 or becomes a consultant to any other party to this Agreement with  
26 respect to the subject matter of this Agreement while this Agreement

1 or any extension of this Agreement is in effect. Cancellation shall  
2 be effective when written notice from the Governor or the governing  
3 bodies of Prescott or CVID is received by all parties to this  
4 Agreement unless the notice specifies a later time. To the extent  
5 A.R.S. § 38-511 is applicable to this Agreement, Prescott hereby  
6 represents that the persons significantly involved in the initiating,  
7 negotiating, securing, drafting and creating of this Agreement on  
8 behalf of Prescott are John R. Moffitt, City Attorney, and Brian Huza,  
9 Environmental Services Director, and the other parties hereto each  
10 hereby represents that neither Mr. Moffitt nor Mr. Huza is or has been  
11 an employee or agent of or consultant to that party during any time  
12 material to the creation of this Agreement. Each party hereto, other  
13 than Prescott, also hereby covenants to not employ either Mr. Moffitt  
14 or Mr. Huza as an employee, agent or consultant for a term of at least  
15 three years following the execution hereof. To the extent A.R.S.  
16 § 38-511 is applicable to this Agreement, CVID hereby represents that  
17 the persons significantly involved in the initiating, negotiating,  
18 securing, drafting and creating of this Agreement on behalf of CVID  
19 are Melvin Shellhorn, Delbert Applebee, Robert Davis and Helen Wells,  
20 as past or current members of the Board, and Thelton D. Beck and L.  
21 Richard Mabery, CVID's counsel, and the other parties hereto each  
22 hereby represents that neither Mr. Beck nor Mr. Mabery is or has been  
23 an employee or agent of or consultant to that party during any time  
24 material to the creation of this Agreement. Each party hereto, other  
25 than CVID, also hereby covenants to not employ either Mr. Beck or Mr.  
26 Mabery as an employee, agent or consultant for a term of at least

1 three years following the execution hereof.

2 12.3 Use Limitation. The water made available to the Tribe from  
3 the various sources under this Agreement is solely for use on the  
4 Reservation, except as otherwise provided. The water made available  
5 to the Tribe under this Agreement may be put to any beneficial use or  
6 reuse on the Reservation without restriction.

7 12.4 Effect of Non-Use. In recognition of the Tribe's waiver and  
8 release of claims based on federal law pursuant to Exhibit 9.1 hereto,  
9 said federal-law claims not being subject to loss due to non-use under  
10 current federal law, the parties recognize and acknowledge that the  
11 water rights and entitlements acquired or confirmed by the Tribe  
12 hereunder are not subject to forfeiture or abandonment due to non-use  
13 by the Tribe. The parties agree to not assert the defenses of  
14 forfeiture, abandonment due to non-use or like defenses based upon the  
15 passage of time against the Tribe.

16 12.5 Environmental Compliance. Environmental compliance shall  
17 be as set forth in Section 8 of the Act.

18 12.6 Disclaimer. Nothing in this Agreement shall be construed  
19 as establishing any standard to be used for the quantification of  
20 federal reserved rights, aboriginal claims, or any other Indian water  
21 claims in any judicial or administrative proceeding.

22 12.7 Evidentiary Effect of Negotiations. This Agreement has been  
23 arrived at in the process of good faith negotiation for the purpose  
24 of resolving legal disputes, including pending litigation, and all  
25 parties hereto agree that no offers and/or compromises made in the  
26 course thereof shall be construed as admissions against interest or

1 be used in any legal proceeding other than one for approval,  
2 confirmation, interpretation, or enforcement of this Agreement.

3 12.8 Effect of Execution by State of Arizona. Execution of this  
4 Agreement by the State of Arizona constitutes the confirmation that  
5 it is the policy of the State of Arizona to assist in carrying out the  
6 provisions hereof to the extent it may do so in accordance with its  
7 responsibility and authority under the law. It is not intended that  
8 this Agreement shall be determinative of the action to be taken by any  
9 state agency in any adjudicatory or rule making proceeding. Nothing  
10 herein shall be construed as a waiver of any rights which the State  
11 of Arizona has as to its trust lands under the Enabling Act.

12 12.9 Rights Held in Trust. The Tribe's rights hereunder shall  
13 be held in trust by the United States for the benefit of the Tribe as  
14 other Indian rights are held. Nothing contained in this Agreement  
15 shall be deemed to alter, amend or diminish the status of those  
16 rights.

17 12.10 Succession. This Agreement shall inure to the benefit of,  
18 and shall be binding upon, the respective successors and assigns of  
19 the parties hereto.

20 12.11 Destruction of Facilities. To the extent that use of water  
21 by the Tribe under this Agreement is dependent on diversion, storage  
22 and/or transmission facilities, the destruction of any such facilities  
23 by any cause shall not permanently extinguish the Tribe's right to  
24 receive water otherwise made available by the affected facility;  
25 however, such destruction may temporarily excuse the parties of the  
26 obligation to deliver such water to the Tribe until the affected

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

10 12.12 Contingent on Appropriation of Funds. The expenditure or  
11 advance of any money or the performance of any obligation by the  
12 United States under this Agreement shall be contingent upon  
13 appropriation of funds therefor. No liability shall accrue to the  
14 United States in case funds are not appropriated.

15 12.13 Officials Not to Benefit. No member of or delegate to  
16 Congress or Resident Commissioner shall be admitted to any share or  
17 part of this Agreement or to any benefit that may arise herefrom.  
18 This restriction shall not be construed to extend to this Agreement  
19 if made with a corporation or company for its general benefit.

20 12.14 Additional Documents. Each party agrees in good faith to  
21 execute such further or additional documents as may be necessary or  
22 appropriate to fully carry out the intent and purpose of this  
23 Agreement.

24 12.15 Governing Law. This Agreement shall be governed by all  
25 applicable laws of the United States of America and the State of  
26 Arizona. Nothing contained herein waives the right of the United

1 States or the Tribe to object to the jurisdiction of the courts of the  
2 State of Arizona to adjudicate any disputes arising under this  
3 Agreement.

4 12.16 Headings. The headings of this Agreement are for reference  
5 only and shall not limit or define the meaning of any provision of  
6 this Agreement.

7 12.17 Counterparts. This Agreement may be executed in duplicate  
8 originals, each of which shall constitute an original Agreement.

9 12.18 Notices. Any notice to be given hereunder shall have been  
10 properly given or made when received by the officer or manager  
11 designated herein, or two (2) days after deposit with the United  
12 States Postal Service, certified or registered mail, postage prepaid,  
13 addressed as follows:

14 If to the United States:

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

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

20 With a copy to:

21 Office of Solicitor  
22 Department of Interior  
Two North Central Avenue  
Suite 1130  
23 Phoenix, Arizona 85004  
24  
25  
26

1 If to the State of Arizona:

2 Office of the Governor  
3 1700 West Washington  
4 Phoenix, Arizona 85007

5 With a copy to:

6 Director  
7 Arizona Department of Water Resources  
8 15 South 15th Avenue, Suite 204  
9 Phoenix, Arizona 85007

10 If to the Tribe:

11 Yavapai-Prescott Indian Tribe  
12 530 Merritt Avenue  
13 Prescott, Arizona 86301  
14 Attn: President

15 With a copy to:

16 Steptoe & Johnson  
17 40 North Central Avenue, 24th Floor  
18 Phoenix, Arizona 85004  
19 Attn: David J. Bodney, Esq.

20 If to Prescott:

21 Prescott City Manager  
22 P.O. Box 2059  
23 Prescott, Arizona 86302

24 With copies to:

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

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

1 If to CVID:

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

6 With a copy to:

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

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

14 12.19 Entire Agreement. This Agreement constitutes the entire  
15 agreement between the parties and no understandings or obligations not  
16 herein expressly set forth shall be binding upon them. This Agreement  
17 may not be modified or amended in any manner unless in writing and  
18 signed by the parties.

19 12.20 Term. The term of this Agreement shall be in perpetuity.

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

22 THE UNITED STATES OF AMERICA

23 By: Ada E. Beck  
24 Asst. Secretary of the Interior  
25  
26

1 STATE OF ARIZONA

2 By: Fife R. [Signature]  
3 Governor

4 YAVAPAI-PRESCOTT INDIAN TRIBE

5 By: Stan Rice Jr  
6 STAN RICE, JR., President

7  
8 CITY OF PRESCOTT, a municipal  
9 corporation

10 By: [Signature]  
11 DAITON RUTKOWSKI, Mayor

Attest:

Marie L. Watson  
MARIE L. WATSON, City Clerk

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

[Signature]  
JOHN R. MORRITT, City Attorney

17 CHINO VALLEY IRRIGATION  
18 DISTRICT

19 By: Robert J. Davis

20  
21 Pursuant to Arizona Revised Statutes Section § 11-952(D), the  
22 foregoing agreement has been reviewed by the undersigned attorney for  
23 the Chino Valley Irrigation District, who has determined that the  
24 agreement is in proper form and is within the powers and authority  
25 granted under the laws of the State of Arizona to the Chino Valley  
26 Irrigation District.

Thelton D. Beck  
THELTON D. BECK, Attorney

Oct. 31

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 arid 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 State of Arizona, and the city of Prescott, to settle all claims.

(7) representation of Prescott, Arizona, and the Yavapai-Prescott Tribe in the Agreement to settle the water rights claims among them, and the water supplies of the Tribe's reservation.

(8) pursuant to the Service Agreement between the Yavapai-Prescott Tribe and the Chino Valley Irrigation District, the Tribe's water rights will be on-reservation, recreational and

(9) to acquire the water rights to fulfill the trust responsibility of the United States, it is appropriate to implement the Agreement, firming up the water rights and the Yavapai-Prescott Tribe to utilize fully and efficiently the water resources.

(10) the Yavapai-Prescott Tribe is a cost-efficient water user and is a cost-efficient water user in the Verde River watershed.

(b) DECLARATIONS.—The Congress declares that the purposes of this title are—

(1) to acquire the water rights to settle among the Chino Valley Irrigation District and the United States;

(2) to acquire the water rights to execute and

(3) to acquire the water rights for the United States to the Yavapai-Prescott Tribe Agreement and

(4) to recognize the assignment of the Yavapai-Prescott Tribe's water rights of replacement not be in conflict with the Management Plan of the Yavapai-Prescott Tribe.

(5) to recognize the water rights of land and water for the development of the Fort

#### SEC. 103. DEFINITIONS.

For purposes of this title—

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:

(1) The term "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) 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, 1988, 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 18, 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 Verde account to section 106.

#### SEC. 106. REPLACEMENT

(a) FUND.—The Secretary shall, as the "Verde River Fund" to provide replacement water required by the Tribe, be available without further action.

(b) CONTENT OF FUND.—The Fund shall be obtained through the subcontract referenced in section 109, and shall be deposited to subsection (d) of this section.

(c) PAYMENTS FROM FUND.—Beginning on the publication of the Fund, 112(a), promptly cause the amounts deposited of the Tribe's CAP contract to be deposited to the Fund city's CAP subcontract.

(d) CONTRACTS.—The Secretary shall, precedent to the payment of the Fund, (c), that the Tribe agree to establish the Fund, to be deposited and administered for the purpose and administration of such accounts, and for any amount determined within the purpose and administration of the Fund.

#### SEC. 107. EXPENDITURE

(a) BY THE CITY.—The City shall, its CAP subcontract, to section 106(d), shall be used for expenses associated with the development of alternative water resources, relinquished under the Settlement Agreement, but shall include, but not be limited to, land and acquisition of ground water resources in the Prescott Area established pursuant to the Settlement Agreement and artificial recharge of the Prescott may be used for existing waterworks of the City.

(b) BY THE TRIBE.—The Tribe shall, its CAP contract and section 106(d), shall be used for the Water Service Agreement for on-reservation water supply.

(c) NO PER CAPITA.—The Secretary shall, any member of the Tribe, made pursuant to section 106(d), per capita payment to the Tribe or employee of the Tribe.

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 (d) 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.

(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 101-628; 104 Stat. 4487) 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 arising under the law based upon water and its members or rights held by the members.

(d) **RIGHTS RETAINED**.—The Tribe is authorized in subsection (a) pursuant to section 106(d) on behalf of the Tribe, water rights claims.

(e) **JURISDICTION**.—The District of Arizona arising under this Settlement Agreement, States Code, of any Agreement.

(f) **CLAIMS**.—No claim by the Tribe, or the United States, or maintaining any Settlement Agreement.

(g) **DISCLAIMER**.—The Tribe disclaims all rights or claims relating to the exterior boundaries of the Tribe.

(h) **FULL SATISFACTION**.—The Tribe, under this title shall be satisfied that Prescott might have related to the allocation of CAP water.

**SEC. 111. MISCELLANEOUS.**

(a) **JOINING OF PARTIES**.—The Settlement Agreement shall not be a bar to any court relating only to the implementation of the Settlement Agreement of the United States or the Tribe to join the United States in any such litigation, or the Tribe to sovereign immunity. In the event Prescott is a party to the Settlement Agreement to arbitrate, the District Court for the United States under the Water Settlement Agreement, sovereign immunity waived.

(b) **NO REIMBURSEMENT**.—The Tribe shall make no claims for implementation of the Settlement Agreement on any lands within the Tribe's reservation; no assessment shall be made on such lands.

(c) **WATER MANAGEMENT**.—The Tribe shall water management consistent with the Settlement Agreement and this title, management plan.

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 lawsuit 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

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

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## YAVAPAI-PRESCOTT WATER RIGHTS

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agency, other than the Bureau of Indian Affairs on behalf of the Tribe.

### TITLE II—AUBURN INDIAN RESTORATION

#### SEC. 201. SHORT TITLE.

This title may be cited as the "Auburn Indian Restoration Act".

#### SEC. 202. RESTORATION OF FEDERAL RECOGNITION, RIGHTS, AND PRIVILEGES.

(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-PRESCOTT INDIAN TRIBE AND  
CITY OF PRESCOTT

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## EXHIBITS

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

1 AGREEMENT

2 THIS AGREEMENT, dated as of \_\_\_\_\_, 1995, is  
3 entered into by and between the Yavapai-Prescott Indian Tribe and the  
4 City of Prescott.

5 1.0 RECITALS

6 1.1 The Yavapai-Prescott Indian Tribe, hereinafter the "Tribe",  
7 and the City of Prescott, hereinafter the "City", have previously  
8 entered into certain agreements which provide for the extension of  
9 sewer and water lines and the furnishing of water service and sewer  
10 disposal service to the Yavapai-Prescott Indian Reservation,  
11 hereinafter the "Reservation". A list of these agreements is attached  
12 as Exhibit 1.1 to this Agreement.

13 1.2 The Tribe, the City and the Secretary of the Interior of the  
14 United States of America, hereinafter the "Secretary", are parties to  
15 certain other instruments which provide for the installation,  
16 maintenance and repair of certain water and sewer lines on the  
17 Reservation. A list of these instruments is attached as Exhibit 1.2  
18 to this Agreement.

19 1.3 The Yavapai-Prescott Indian Tribe Water Rights Settlement  
20 Act of 1994, Pub. L. 103-434, 108 Stat. 4526 (1994), hereinafter the  
21 "Act", provides for the settlement of certain litigation concerning  
22 the Tribe's water rights.

23 1.4 Pursuant to the Act, the Tribe, the City and other parties  
24 are authorized to enter into a Yavapai-Prescott Indian Tribe Water  
25 Rights Settlement Agreement, hereinafter the "Settlement Agreement."  
26 Subparagraphs 5.1 and 5.3 of the Settlement Agreement ratify and  
incorporate the terms of this Agreement.

1 1.5 The Tribe and the City desire to enter into this Agreement  
2 to provide for water, sewer and effluent service to the Reservation.

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

6 2.0 EXISTING AGREEMENTS AND EASEMENTS

7 2.1 The previous agreements listed in Exhibit 1.1 are superseded  
8 by the terms of this Agreement unless expressly stated otherwise  
9 herein.

10 2.2 The grants of easements and rights-of-way listed in Exhibit  
11 1.2 are hereby ratified and approved, with the exception of that  
12 portion of the easement listed in paragraph B of Exhibit 1.2 which was  
13 abandoned pursuant to the 1980 Agreement between the Tribe and the  
14 City, as well as any other easements or portions thereof, if any,  
15 which have been amended, modified or relinquished pursuant to previous  
16 agreements between the Tribe and the City. All easements and rights-  
17 of-way listed in Exhibit 1.2 are subject to the rental payments, terms  
18 and conditions contained in the granting instruments, all applicable  
19 laws and regulations and the provisions of subparagraph 2.6.

20 2.3 Paragraphs 1 and 2 of the First Amendment to the 1980 Water  
21 and Sewer Agreement (described in paragraph I of Exhibit 1.1), which  
22 provide for the payment of an annual rental fee for the easement  
23 described in paragraph G of Exhibit 1.2 and a waiver of claims by the  
24 Tribe and the City, remain in full force and effect.

1       2.4       Nothing in this Agreement shall in any way modify, change  
2       or abrogate any rights of the Tribe or its members under those  
3       provisions of the documents described in paragraph F of Exhibit 1.2  
4       and paragraphs F and H of Exhibit 1.1 which provide for the domestic  
5       water service for Tribal members through one meter, for payment for  
6       water and sewer service by the Tribe on behalf of its members to the  
7       City, and for the ownership of certain residential installations.

8       2.5       The Tribe hereby waives any rights which it may enjoy under  
9       paragraph 2 of the deed of easement described in paragraph C of  
10      Exhibit 1.2 to receive sewer service from the City without cost and  
11      make unlimited connections to the City sewer system.

12      2.6       No existing main, line, pumping station or other  
13      installation on or across the Reservation, or any easement or right-  
14      of-way associated therewith, may be conveyed by the City to a third  
15      party without the Tribe's written consent; provided, however, that the  
16      Tribe hereby grants its consent for such a conveyance from the City  
17      to a regional water authority or other public entity which has taxing  
18      and/or regulatory powers and has at least one Tribal nominee serving  
19      on its governing board; and provided further that any property so  
20      conveyed would be subject to the terms of this subparagraph and all  
21      other applicable terms of this Agreement and any granting instruments.  
22      No existing main, line, pumping station or other installation on or  
23      across the Reservation may be removed by the City without the Tribe's  
24      written consent; provided, however, that the Tribe shall not  
25      unreasonably withhold its consent to the City's removal of an  
26      installation that was not financed, constructed or acquired by the

1 Tribe, Reservation users or a Federal agency or other party on behalf  
2 of the Tribe if removal of the installation would not adversely affect  
3 the delivery of water or sewer service to the Tribe or any user  
4 located on the Reservation. In the event of abandonment of any  
5 existing easement, right-of-way or installation on or across the  
6 Reservation, the provisions of subparagraph 3.4 shall apply. In the  
7 circumstances described in subparagraph 8.5, all existing  
8 installations on or across the Reservation designed or used to provide  
9 water, effluent or sewer service to Reservation users, and any  
10 easements and rights-of-way associated therewith, shall revert to the  
11 Tribe in the manner provided by subparagraph 3.5; provided, however,  
12 that existing installations and associated easements and rights-of-way  
13 which provide or were designed to provide service to both Reservation  
14 users and non-Reservation users shall, in such circumstances, be  
15 jointly owned and operated by the Tribe and the City or its assignee.  
16 The provisions of this subparagraph shall also apply to all mains,  
17 lines, pumping stations and other installations, and all easements and  
18 rights-of-way associated therewith, which are located off the  
19 Reservation and were financed, constructed or acquired by the Tribe,  
20 Reservation users or a Federal agency or other party on behalf of the  
21 Tribe.

22 2.7 Should the future residential, commercial, industrial or  
23 other economic development on the Reservation necessitate the upgrade  
24 or enlargement of an existing installation on or across the  
25 Reservation and, due to limitations in the original grant of easement,  
26 a new easement is required for the upgraded or enlarged installation,

1 the provisions of subparagraph 3.7 shall apply. Should future  
2 development outside the Reservation necessitate the upgrade or  
3 enlargement of an existing installation on or across the Reservation  
4 and, due to limitations in the original grant of easement, a new  
5 easement is required for the upgraded or enlarged installation, the  
6 provisions of subparagraph 3.6(B) shall apply; provided, however,  
7 that, subject to the Secretary's discretion, the fair market value of  
8 the new easement shall be offset by the fair market value of the  
9 previous easement and by any direct benefits accruing to the Tribe by  
10 virtue of the upgrade or enlargement of the installation or by the  
11 Tribe's actual use of City easements pursuant to subparagraph 3.8(A) .  
12 If the upgrade or enlargement of an existing installation does not  
13 require a new easement, the City shall not be required to pay any  
14 additional amount to the Tribe for making the upgrade or enlargement  
15 within the original easement. If the upgraded or enlarged  
16 installation is situated at the same location as the previous  
17 installation, the new easement shall be considered "adjacent and  
18 parallel" to the previous easement for purposes of subparagraph  
19 3.6(B) .

20 3.0 WATER INSTALLATIONS AND EASEMENTS

21 3.1 The Tribe agrees to pay for and install (or have paid for  
22 and installed by Reservation users) upon the Reservation all water and  
23 sewer mains, lines, pumping stations and other installations required  
24 in connection with the development of the Reservation and used solely  
25 by Reservation water or sewer users, in accordance with plans and  
26 specifications to be prepared by the Tribe's registered engineers (or

1 the registered engineers of a Reservation user) pursuant to City  
2 standards and subject to approval by the City. Upon satisfactory  
3 completion of such installations, the City's Environmental Services  
4 Director or his designee shall notify the Tribe (or the Reservation  
5 user) in writing that such installations are thereby accepted. Should  
6 any disagreement arise between the Tribe (or the Reservation user) and  
7 the City with regard to the engineering, construction or installation  
8 of such installations, the Tribe's engineer (or the Reservation user's  
9 engineer) and the City Environmental Services Director shall agree  
10 upon a third engineer within ten (10) calendar days after such  
11 disagreement and the decision of such third engineer shall be final  
12 and shall be made within fifteen (15) calendar days after selection  
13 of such third engineer. Should the Tribe's engineer (or the  
14 Reservation user's engineer) and the City Environmental Services  
15 Director fail to agree on the selection of a third engineer pursuant  
16 to this section, the matter in disagreement shall be subject to  
17 arbitration pursuant to paragraph 8.2.

18 3.2 Following acceptance by the City Environmental Services  
19 Director, such installations shall become the property of the City,  
20 free and clear of any and all encumbrances, claims or liens whatsoever  
21 for use thereof by the City, and the Tribe (or the Reservation user)  
22 shall execute and deliver to the City a bill of sale evidencing the  
23 transfer of title to such installations, subject to the provisions of  
24 subparagraphs 3.3, 3.4 and 3.5. The Tribe also agrees to approve the  
25 grant by the Secretary to the City of any easement or right-of-way on  
26 or across the Reservation required for the extension of water and

1 sewer installations to service the development of the Reservation, and  
2 hereby grants a license to the City to enter upon existing Reservation  
3 streets and roads to repair and maintain such installations.

4 3.3 Upon acceptance by the City of mains, lines, pumping  
5 stations and other installations constructed by the Tribe (or the  
6 Reservation user), and easements and rights-of-way associated  
7 therewith, for residential, commercial or industrial development on  
8 the Reservation, the City agrees in connection therewith to:

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

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

23 C. At the expense of the City, to maintain the  
24 installations adequately to service residential, commercial and  
25 industrial enterprises on the Reservation.

1           D. Not encumber any such installations or related  
2 easements or rights-of-way.

3       3.4       The City shall be deemed to have abandoned an easement if  
4 the mains, lines, pumping stations or other installations (the  
5 "installations") located within such easement are not used to provide  
6 water or sewer service for a continuous period of one year. Upon such  
7 abandonment, the following provisions shall apply:

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

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

22           C. If the installations located within such easement were  
23 not paid for by the Tribe, Reservation users or a Federal agency or  
24 other party on behalf of the Tribe, the City, subject to subparagraph  
25 3.4(D), shall have one year from the date of its receipt of the  
26 request referred to in subparagraph 3.4(A) to remove such

1 installations and may enter upon the easement property to effect such  
2 removal. At the expiration of such one year period any such  
3 installations not removed shall become the property of the Tribe, free  
4 and clear of any and all encumbrances, claims or liens whatsoever, and  
5 the City, upon written request by the Tribe, shall execute and deliver  
6 to the Tribe a bill of sale or other instrument in form and substance  
7 reasonably satisfactory to the Tribe evidencing the transfer of title  
8 of such unremoved installations to the Tribe.

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

13 3.5 In the circumstances described in subparagraph 8.5, all  
14 installations, easements and rights-of-way conveyed to the City  
15 pursuant to subparagraph 3.2 shall become the property of the Tribe,  
16 free and clear of any and all encumbrances, claims or liens  
17 whatsoever, and the City shall, upon written request by the Tribe,  
18 execute and deliver to the Tribe a bill of sale and/or deed evidencing  
19 the transfer of title to such installations, easements and rights-of-  
20 way.

21 3.6 Nothing contained in this paragraph 3.0 or this Agreement  
22 shall be construed to require the Tribe, Reservation users or a  
23 Federal agency or other party on behalf of the Tribe to:

24 A. Pay for, install or upgrade any main, line, pumping  
25 station or other installation which serves any user outside the  
26

1 Reservation, or pay for, install or upgrade any off-Reservation main,  
2 line, pumping station or other installation.

3 B. Approve the grant of any easement or right-of-way on  
4 or across the Reservation for any main, line, pumping station or other  
5 installation which serves any user outside the Reservation; provided,  
6 however, that the Tribe agrees to use its best efforts in assisting  
7 the City in obtaining such additional easements or rights-of-way  
8 adjacent and parallel to existing easements or rights-of-way across  
9 the Reservation for fair market value. Said fair market value is to  
10 be offset by any direct benefits accruing to the Tribe by virtue of  
11 the operation of the installation or by the Tribe's actual use of City  
12 easements pursuant to subparagraph 3.8(A). At the City's option,  
13 payment for additional easements and rights-of-way pursuant to this  
14 subparagraph may be made in one payment for the present value of the  
15 easement throughout the term thereof. All easements and rights of way  
16 remain subject to the Secretary's discretion in granting such  
17 easements or rights-of-way, the requirements of Federal law and such  
18 non-compensatory terms and conditions as are applicable to the  
19 adjacent easement or right-of-way. Nothing contained in this  
20 subparagraph or this Agreement shall be construed to require the Tribe  
21 to approve the grant of any easement which is not adjacent and  
22 parallel to any existing easement or right-of-way or is inconsistent  
23 with existing or planned Reservation use or occupancy. All easements  
24 granted pursuant to this subparagraph, and the installations  
25 associated therewith, shall be subject to the provisions of  
26 subparagraph 2.6.

1           C. Grant or convey to the City any water or sewer  
2 installations, or approve the grant by the Secretary to the City of  
3 any easements or rights-of-way associated therewith, which are not  
4 connected to the City's water or sewer systems.

5           D. Grant or convey to the City the right to use any mains,  
6 lines, pumping stations or other installations, or any easements or  
7 rights-of-way associated therewith, which were financed, constructed  
8 or acquired by the Tribe or by a Federal agency or other party on  
9 behalf of the Tribe, to service any user outside the Reservation  
10 without the Tribe's written consent; provided, however, that if the  
11 Tribe and the Secretary approve of or grant such use by the City, and  
12 determine that such use would not adversely impact the Tribe, the  
13 Tribe hereby agrees that such use of such installations, easements or  
14 rights-of-way shall be without payment of compensation, subject to the  
15 Secretary's discretion; and provided further that nothing contained  
16 in this subparagraph 3.6(D) or this Agreement shall be construed to  
17 require the Tribe to approve the grant of any easement or extension  
18 of an easement which is not adjacent and parallel to any existing  
19 easement or right-of-way or is inconsistent with existing or planned  
20 Reservation use or occupancy. Unless the Tribe agrees otherwise in  
21 writing, City use of installations, easements or rights-of-way  
22 pursuant to this subparagraph shall in no manner affect the reversion  
23 of such installations, easements or rights-of-way to sole Tribal  
24 ownership pursuant to subparagraphs 2.6, 3.4 and 3.5 in the  
25 circumstances described in those subparagraphs.  
26

1           E. Grant or convey to the City any water or sewer  
2 installations, or approve the grant by the Secretary to the City of  
3 any easements or rights-of-way, after City water and sewer service to  
4 the Tribe and Reservation users has terminated pursuant to  
5 subparagraph 8.5.

6       3.7       Should the future residential, commercial, industrial or  
7 other economic development on the Reservation necessitate, in whole  
8 or in part, an expansion of the City's water or sewer installations  
9 or water or sewer plant capacity, the Tribe agrees to approve the  
10 grant by the Secretary to the City of any future easements or rights-  
11 of-way across the Reservation for such required installations without  
12 payment of compensation, subject to the Secretary's discretion in  
13 granting such easements or rights-of-way, the requirements of Federal  
14 law and such non-compensatory terms and conditions as are applicable  
15 to an adjacent easement or right-of-way; provided, however, that  
16 nothing contained in this subparagraph or this Agreement shall be  
17 construed to require the Tribe to approve the grant of any easement  
18 which is not adjacent and parallel to any existing easement or right-  
19 of-way or is inconsistent with existing or planned Reservation use or  
20 occupancy. All easements granted pursuant to this subparagraph, and  
21 the installations associated therewith, shall be subject to the  
22 provisions of subparagraph 2.6.

23       3.8       To the extent it is necessary or desirable to the Tribe to  
24 construct, operate and maintain off-Reservation mains, lines, pumping  
25 stations or other installations to enjoy its rights pursuant to  
26 paragraph 7.0 or, in the circumstances described in subparagraph 8.5,

1 pursuant to the Type 2 Grandfathered Groundwater Rights or equivalent  
2 thereof, as set forth in subparagraph 8.4(C) of this Agreement and  
3 subparagraph 5.4 of the Settlement Agreement, the City agrees:

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

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

1       4.0           WATER SERVICE

2       4.1           The City agrees to allow the Tribe (and Reservation water  
3 users) to make such connections, extensions or additions to water  
4 installations which presently exist upon or adjacent to the  
5 Reservation or are hereafter constructed upon or adjacent to the  
6 Reservation as may be deemed necessary or desirable by the Tribe for  
7 the purpose of providing water service to the Tribe and existing and  
8 future Reservation water users.

9       4.2           Subject to the granting of any necessary easement or right-  
10 of-way pursuant to subparagraph 3.2 or 3.7, the City agrees to provide  
11 and furnish water for all residential uses on the Reservation through  
12 distribution facilities which are of sufficient capacity to provide,  
13 and do provide, such minimum demand flows, flow durations, residual  
14 pressures at each fire-fighting point of service, static pressure  
15 ranges and regulated maximum pressures under normal operating  
16 conditions as are required for the residential uses and associated  
17 water uses (including fire-fighting) and are consistent with the  
18 standards of the City for service within city limits and the  
19 professional standards of the Insurance Service Organization or  
20 comparable entity; provided, however, that the City distribution  
21 facilities shall be of sufficient capacity to provide, and do provide,  
22 a minimum demand flow for residential uses of at least one thousand  
23 (1000) gallons per minute with a residual pressure of twenty (20)  
24 pounds per square inch at each fire-fighting point of service and a  
25 static pressure range of fifty (50) pounds of pressure per square inch  
26 to one hundred (100) pounds of pressure per square inch at each point

1 of consumption, with the highest pressure regulated to a maximum of  
2 one hundred (100) pounds of pressure per square inch at each point of  
3 consumption under normal operating conditions; and provided further  
4 that nothing contained herein shall be construed to create any City  
5 liability for inability to provide the capacities, flows, flow  
6 durations or pressures set forth herein for Reservation water uses due  
7 solely and proximately to a design or construction defect in  
8 installations constructed by the Tribe or Reservation water user  
9 pursuant to paragraph 3.1.

10 4.3 Subject to the granting of any necessary easement or right-  
11 of-way pursuant to subparagraph 3.2 or 3.7, the City agrees to provide  
12 and furnish water for all industrial or commercial uses on the  
13 Reservation (including multi-family residential structures) through  
14 distribution facilities which are of sufficient capacity to provide,  
15 and do provide, such minimum demand flows, flow durations, residual  
16 pressures at each fire-fighting point of service, static pressure  
17 ranges and regulated maximum pressures under normal operating  
18 conditions as are required for the industrial and commercial uses and  
19 associated water uses (including fire-fighting) and are consistent  
20 with the standards of the City for service within city limits and the  
21 professional standards of the Insurance Service Organization or  
22 comparable entity; provided, however, that the City distribution  
23 facilities shall be of sufficient capacity to provide, and do provide,  
24 a minimum demand flow for industrial and commercial uses of at least  
25 two thousand five hundred (2500) gallons per minute with a residual  
26 pressure of fifty (50) pounds per square inch at each fire-fighting

1 point of service and a static pressure range of fifty (50) pounds of  
2 pressure per square inch to one hundred (100) pounds of pressure per  
3 square inch at each point of consumption, with the highest pressure  
4 regulated to a maximum of one hundred (100) pounds of pressure per  
5 square inch at each point of consumption under normal operating  
6 conditions; and provided further that nothing contained herein shall  
7 be construed to create any City liability for inability to provide the  
8 capacities, flows, flow durations or pressures set forth herein for  
9 Reservation water uses due solely and proximately to a design or  
10 construction defect in installations constructed by the Tribe or  
11 Reservation water user pursuant to paragraph 3.1.

12 4.4 If the Tribe determines in good faith that the residential,  
13 industrial or commercial development within the Reservation results  
14 in the need for expanded water plant or distribution facilities to  
15 provide surplus water flows (i.e., unusual capacity, flow or pressure  
16 demands which are in excess of the standard residential, industrial  
17 and commercial water requirements referenced in subparagraphs 4.2 and  
18 4.3), the City shall use all diligent efforts to enlarge or expand  
19 such plant and distribution facilities within the City's service area  
20 in order to provide such surplus flows; provided, however, that the  
21 City may require the Reservation water user or users requiring the  
22 surplus flows to pay the costs of providing such surplus flows.

23 4.5 All water delivered by the City pursuant to this paragraph  
24 4.0 shall meet or exceed all applicable water quality standards  
25 established by the Arizona Department of Environmental Quality and all  
26 other agencies having jurisdiction.

1       4.6       Nothing contained in this paragraph 4.0 or this Agreement  
2 shall be construed to:

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

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

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

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

18       5.0       SHORTAGE PRIORITY

19       5.1       The City agrees that, in the event of a water shortage which  
20 would otherwise result in the reduction or curtailment of water  
21 deliveries to Reservation users pursuant to subparagraph 5.2,  
22 residential, commercial and industrial users located upon the  
23 Reservation shall have an absolute prior right, during any year in  
24 which there is such a shortage, over any other user of water supplied  
25 by the City, either inside or outside the corporate limits of the  
26 City, to the first five hundred and fifty (550) acre-feet per annum

1 of water supplied by the City. During such times as this absolute  
2 priority is exercised by the Tribe to prevent reduced or curtailed  
3 water deliveries pursuant to subparagraph 5.2, the City may elect,  
4 after receiving the Tribe's permission, to divert from Granite Creek  
5 a quantity of water equivalent to the absolute priority water  
6 delivered to the Reservation, said diversions being in lieu of  
7 diversion by the Tribe of a corresponding portion of the Tribe's  
8 Granite Creek rights as described in the Settlement Agreement and  
9 subject to the same restrictions applicable to diversions by the Tribe  
10 under Subparagraph 6.2 thereof. Among Reservation users, the Tribe  
11 shall determine delivery priorities of this water and so notify the  
12 City.

13 5.2 With the exception of the Tribe's absolute priority water  
14 described in subparagraph 5.1, during times of shortage, the remainder  
15 of the water delivered through the City's water distribution system  
16 may be reduced or curtailed to such classes of users as the City may  
17 determine from time to time, subject to the following restrictions.  
18 The next to last class of users to which water deliveries may be  
19 reduced or curtailed shall consist of all commercial or industrial  
20 users located within the boundaries of the City and the Reservation.  
21 The last class of users to which water deliveries may be reduced or  
22 curtailed shall consist of all residential or domestic users located  
23 within the boundaries of the City and the Reservation, on the same  
24 basis. For purposes of this paragraph, the Tribe's governmental  
25 offices shall be considered a residential or domestic user. Within  
26 each user class as set forth in this paragraph, the reductions in

1 water delivery shall be on a proportional basis, based upon each  
2 user's average water consumption over the prior twelve (12) months,  
3 as it relates to the total amount of water delivered to members of the  
4 class through the City's water delivery system during the same time  
5 period.

6 5.3 The Tribe shall adopt a water conservation code designed to  
7 limit per capita residential water use on the Reservation during times  
8 of shortage which are comparable to the average per capita residential  
9 water use during times of shortage within that portion of the City's  
10 water service area which lies outside the boundaries of the  
11 Reservation. The Tribal water conservation code shall also implement  
12 conservation measures during times of shortage for Reservation  
13 commercial and industrial water users which are comparable to the  
14 conservation measures applicable during times of shortage to  
15 commercial and industrial water users within that portion of the  
16 City's water service area which lies outside the boundaries of the  
17 Reservation. Nothing in this subparagraph 5.3 shall be deemed to  
18 limit or otherwise affect in any manner the rights of Reservation  
19 water users under subparagraphs 5.1 and 5.2 or any other applicable  
20 provision of this Agreement.

21 6.0 SEWER SERVICE

22 6.1 Subject to any total or partial moratorium on new sewer  
23 connections as set forth in subparagraph 6.2, the City agrees to allow  
24 the Tribe (and Reservation sewer users) to make such connections,  
25 extensions or additions to sewer installations which presently exist  
26 upon or adjacent to the Reservation or are hereafter constructed upon

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

4 6.2 If the rate of development upon the Reservation or within  
5 the service area of the City, as the term is defined in subparagraph  
6 6.3, results in the need for expanded sewer treatment or collection  
7 and outfall facilities, the City shall use all diligent efforts to  
8 obtain the necessary financing for such expansion, so as to expedite  
9 development on the Reservation; provided, however, that if the City  
10 is temporarily unable to construct such expanded sewer treatment or  
11 collection or outfall facilities because of (a) fiscal restraints  
12 during the first fiscal year in which construction of expanded  
13 facilities is required or (b) refusal of participating agencies, such  
14 as the Environmental Protection Agency, to grant necessary financing,  
15 and should the City be required to impose a moratorium on future sewer  
16 connections or collection and outfall facilities by the Environmental  
17 Protection Agency, the Arizona Department of Environmental Quality,  
18 or any other appropriate agency with jurisdiction, such moratorium  
19 shall apply equally to all future sewer connections or collection and  
20 outfall facilities, without regard to whether the proposed development  
21 is located within that portion of the City's sewer service area which  
22 lies outside the boundaries of the Reservation, or that portion of the  
23 City's sewer service area which encompasses the Reservation. If the  
24 imposition of a moratorium does not result in outright prohibition of  
25 future sewer connections, but imposes a limitation on the number  
26 thereof, the permitted number of future sewer connections shall be

1 allocated equitably between development on the Reservation and  
2 development within that portion of the City's service area outside the  
3 Reservation.

4 6.3 With respect to the need for construction of expanded sewer  
5 treatment or collection and outfall facilities, or the use of existing  
6 sewer treatment, collection or outfall facilities, the City shall not  
7 establish any development priorities, whether fiscal or otherwise,  
8 between development within that portion of the City's service area  
9 which lies outside the boundaries of the Reservation and development  
10 within that portion of the City's sewer service area which encompasses  
11 the Reservation, and the City shall not discriminate in any manner  
12 between sewer connections on the Reservation and those outside the  
13 Reservation; provided, however, that nothing contained in this  
14 subparagraph 6.3 shall prohibit the City from establishing development  
15 priorities (including, but not limited to, priorities for sewer  
16 connections) that favor development on the Reservation and within the  
17 incorporated limits of the City over development in other areas to  
18 which the City provides water or sewer service. For purposes of this  
19 subparagraph and subparagraph 6.2, the service area of the City shall  
20 include (1) the area within the territorial boundaries of the City and  
21 (2) any additional area in which the City serves domestic, commercial  
22 and industrial users or owns water or sewer mains, lines and booster  
23 facilities with which to provide such service.

24 6.4 Subject to any total or partial moratorium on sewer  
25 connections as set forth in subparagraph 6.2, and subject to the  
26 granting of any necessary easement or right-of-way pursuant to

1 subparagraph 3.2 or 3.7, the City agrees to allow connection of all  
2 future residential, commercial or industrial development on the  
3 Reservation to the City sewer system and to accept and treat to the  
4 extent required by law all domestic, commercial and industrial sewage  
5 and wastewater arising from all existing development on the  
6 Reservation and any and all future development on the Reservation,  
7 delivered to the City sewer system from the Reservation. All  
8 Reservation discharges to the City sewer system shall conform to the  
9 pretreatment standards applicable to similar non-Reservation  
10 discharges into the City sewer system.

11 6.5 Except with respect to on-Reservation facilities exclusively  
12 serving Reservation sewer users, nothing in this paragraph 6.0 or this  
13 Agreement shall be construed to require the Tribe (or Reservation  
14 sewer users) to pay for, install or upgrade any City facilities needed  
15 to provide the sewer service provided for in this paragraph 6.0.

16 7.0 EFFLUENT SERVICE

17 7.1 All effluent generated on the Reservation shall be  
18 considered the property of the Tribe until such time as it leaves the  
19 Reservation in City installations and is excess to Tribe's  
20 requirements for effluent use or conveyance pursuant to subparagraph  
21 7.2, has been conveyed by the Tribe or City to a third party user, or  
22 loses its character as effluent. At the Tribe's option, Reservation  
23 effluent may be delivered to the City for treatment and subsequent use  
24 or sale by the Tribe pursuant to subparagraph 7.2 or captured and used  
25 or sold by the Tribe pursuant to subparagraph 7.3. If neither used  
26 nor sold by the Tribe pursuant to subparagraphs 7.2 or 7.3, effluent

1 generated on the Reservation shall be the City's property for  
2 disposition as it pleases.

3 7.2 The City agrees to allow the Tribe and/or its agents to make  
4 such connections, extensions or additions to effluent installations  
5 which presently exist or are hereafter constructed as may be deemed  
6 necessary or desirable by the Tribe for the purpose of using the  
7 effluent generated on the Reservation; provided, however, that such  
8 connections, extensions or additions to effluent installations will  
9 not adversely affect such installations and will be subject to the  
10 City's approval, such approval to not be unreasonably withheld; and  
11 provided further that the cost of constructing, operating and  
12 maintaining such connections, extensions or additions shall be borne  
13 solely by the Tribe and/or its agents. The Tribe shall have an  
14 absolute first priority for all effluent produced from the treatment  
15 of Reservation sewage or wastewater at City treatment facilities, and  
16 may direct the delivery of such effluent through such connections,  
17 extensions or additions to Reservation effluent users, third-party  
18 purchasers of Reservation effluent, or a combination thereof. Unless  
19 agreed otherwise by the City, such deliveries may not exceed the rate  
20 at which Reservation sewage is generated and treated at City treatment  
21 facilities, said rate to be determined by multiplying the average  
22 daily gallon quantity of water delivered to Reservation users during  
23 the previous month by the system-wide percentage of sewage generation  
24 to water deliveries or, at the Tribe's option, by the Tribe and/or its  
25 agents installing, operating and maintaining at their cost adequate  
26 measuring devices for determining the actual rate of sewage generation

1 by Reservation users. The Tribe and/or its agents shall be solely  
2 responsible for obtaining and paying the costs for any necessary  
3 regulatory permits or approvals for use of the effluent; provided,  
4 however, that the City shall cooperate with and support the Tribe  
5 and/or its agents in obtaining any such permits and approvals. Use  
6 of effluent pursuant to this subparagraph 7.2 and this Agreement shall  
7 not require a more stringent level of sewage or wastewater treatment  
8 by the City than is otherwise effected by City treatment facilities.

9 7.3 The Tribe may, at its option, construct, operate and  
10 maintain a separate effluent collection, treatment and distribution  
11 system for the use and/or sale of Reservation effluent. To the extent  
12 that existing sewer or effluent installations were constructed with  
13 Tribal funds (or with federal or private funds where the federal  
14 agency or private party involved does not object to a reconveyance  
15 pursuant to this subparagraph and the installations were built to  
16 provide sewer or effluent service only to Reservation users or off-  
17 Reservation purchasers of Tribal effluent), the Tribe may request and  
18 the City shall execute a reconveyance or deed to the Tribe of such  
19 installations and associated easements and rights-of-way free and  
20 clear of any and all encumbrances, claims or liens whatsoever in the  
21 manner provided by subparagraphs 3.4 and 3.5; provided, however, that  
22 the Tribe shall at its expense perform all acts necessary to  
23 disconnect such installations from the City's installations, subject  
24 to the approval of the City Environmental Services Director to prevent  
25 damage to the City's mains and lines, with review by a third engineer  
26 as provided in subparagraph 3.1 in case of dispute; and provided

1 further that the City shall not be required to reconvey to the Tribe  
2 any easements or rights-of-way which are necessary for City  
3 installations which are not the subject of the reconveyance.

4 7.4 All effluent delivered by the City pursuant to this  
5 paragraph 7.0 shall meet or exceed all applicable quality standards  
6 established by the Arizona Department of Environmental Quality and all  
7 other agencies having jurisdiction.

8 7.5 Nothing contained in this paragraph 7.0 or this Agreement  
9 shall be construed to prohibit the City and Tribe from jointly owning,  
10 constructing, operating or maintaining effluent installations or  
11 systems for Reservation effluent use or for integrated on-Reservation  
12 and off-Reservation effluent use.

13 7.6 Except with respect to on-Reservation facilities exclusively  
14 serving Reservation effluent users and off-Reservation facilities  
15 exclusively serving users of Reservation effluent designated by the  
16 Tribe pursuant to subparagraph 7.2, and except as provided in  
17 paragraph 9.0, nothing in this paragraph 7.0 or this Agreement shall  
18 be construed to require the Tribe (or users of Reservation effluent)  
19 to pay for, install or upgrade any City facilities needed to provide  
20 the effluent service provided for in this paragraph 7.0.

21 8.0 PERFORMANCE AND DEFAULT

22 8.1 Should either the Tribe or the City determine that the other  
23 party has breached or defaulted in the timely performance of any  
24 obligation under this Agreement, the aggrieved party shall provide  
25 written notice to that effect and the breaching or defaulting party  
26 shall have thirty (30) calendar days from the receipt of notice to

1 cure the breach or default, unless the aggrieved party provides a  
2 written extension of this cure period; provided, however, that failure  
3 to deliver water at the flows and pressures provided in subparagraphs  
4 4.2 and 4.3 or in accordance with the schedule of priorities provided  
5 in paragraph 5.0 must be cured within twenty-four (24) hours of  
6 notice, unless the Tribe provides a written extension of this cure  
7 period or the City is physically unable to comply with subparagraphs  
8 4.2 and 4.3 or paragraph 5.0 due solely and proximately to an Act of  
9 God which the City could not reasonably have prevented, avoided or  
10 relieved through foresight or prudence.

11 8.2 Disputes under this Agreement are subject to arbitration  
12 under the rules, regulations and standards of the American Arbitration  
13 Association, with review by the United States District Court for the  
14 District of Arizona, as provided in Section 10(e) of the Act;  
15 provided, however, that the Tribe may, following the cure period  
16 provided in subparagraph 8.1, immediately seek equitable relief in  
17 United States District Court for the District of Arizona to enforce  
18 the provisions of subparagraphs 4.2 and 4.3 or paragraph 5.0; and  
19 provided further that the Tribe may commence an action in United  
20 States District Court for the District of Arizona seeking a  
21 determination pursuant to subparagraph 8.5.1 or 8.5.2 without first  
22 submitting the matter to arbitration.

23 8.3 If the Tribe or the City breaches or defaults in the timely  
24 performance of any obligation under this Agreement, the party not in  
25 default, to the extent permitted by applicable law, shall be entitled  
26 to all damages incurred arising from the breach or default, including

1 reasonable attorneys' fees and cost of suit, as set by the arbitrator,  
2 hearing examiner or court. The parties expressly agree that the  
3 rights conferred by this Agreement may be enforced through specific  
4 performance. The foregoing shall not in any way limit or restrict any  
5 right or remedy at law or equity which would otherwise be available  
6 to the party not in breach or default.

7 8.4 As security for its performance under this Agreement, the  
8 City agrees:

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

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

22 C. That it shall hold 3169 acre-feet per annum of Type 2  
23 Grandfathered Groundwater Rights in trust for the Tribe as security  
24 for the performance of this Agreement until such time, if ever, that  
25 it shall convey such Type 2 Grandfathered Groundwater Rights to the  
26 Tribe in the circumstances described in subparagraph 8.5; provided,

1 however, that, upon any conveyance of the Type 2 Grandfathered  
2 Groundwater Rights to the Tribe pursuant to this Agreement, said  
3 rights may only be utilized by the Tribe to provide water service to  
4 Reservation water users; and provided further that, following any such  
5 conveyance, the Tribe shall employ all reasonable efforts to establish  
6 a separate entitlement under state law to withdraw groundwater in the  
7 Prescott Active Management Area for delivery to and use on the  
8 Reservation under equivalent or more favorable terms and conditions  
9 (including quantity) as the Type 2 Grandfathered Groundwater Rights,  
10 as determined by the Arizona Department of Water Resources or  
11 successor agency in consultation with the Secretary, and the Type 2  
12 Grandfathered Groundwater Rights shall be subject to reversion to the  
13 City if and when the Tribe establishes such an equivalent, separate  
14 entitlement.

15 8.5 In the following circumstances, the City shall, at the  
16 Tribe's option, execute the conveyances of installations, easements,  
17 rights-of-way and Type 2 Grandfathered Groundwater Rights provided for  
18 in subparagraphs 2.6, 3.5 and 8.4:

19 8.5.1 Upon a judicial determination that any one of the following  
20 circumstances exists or has occurred:

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

25 B. Failure of the City to act diligently or in good faith  
26 to provide surplus flows as provided in paragraph 4.4.

1 C. Inability of the City to provide the Reservation water  
2 users with the absolute priority water provided for in subparagraph  
3 5.1, or failure to act in good faith in exercising the schedule of  
4 priorities provided for in paragraph 5.0.

5 8.5.2 With respect to a conveyance of sewer easements and  
6 installations only, upon a judicial determination that the City has  
7 failed to act diligently or in good faith in expanding sewer system  
8 capacity to prevent a total or partial moratorium on Reservation sewer  
9 system connections.

10 8.5.3 Automatically upon cessation or termination of the City's  
11 corporate existence, unless the Tribe has agreed in writing otherwise  
12 or unless this Agreement has been assumed by a regional water  
13 authority or other public entity pursuant to subparagraph 8.4(A).

14 8.5.4 As a condition to Tribal consent to the City's disposition  
15 of water-related assets pursuant to subparagraph 8.4(A) to any entity  
16 other than a regional water authority or other public entity as  
17 described in that subparagraph.

18 9.0 FINANCIAL PROVISIONS

19 9.1 Except as provided in subparagraphs 9.2 and 9.3, hook ups  
20 to City water, sewer and/or effluent installations, by Reservation  
21 water, sewage and effluent users (and any off-Reservation users of  
22 Reservation effluent pursuant to subparagraph 7.2), and water, sewer  
23 and effluent service to such users pursuant to paragraphs 4.0, 5.0,  
24 6.0 and 7.0, shall be at the same rate and subject to the same  
25 conditions as the rate and conditions imposed upon users who reside  
26 within or use water within the corporate limits of the City; provided,

1 however, that no conditions imposed on Reservation water, sewer and  
2 effluent users or off-Reservation users of Reservation effluent shall  
3 be inconsistent with the terms of this Agreement.

4 9.2 Reservation water, sewer and effluent users, and any off-  
5 Reservation users of Reservation effluent pursuant to subparagraph  
6 7.2, shall not pay or be liable for any City sales tax, or other form  
7 of City tax, for the hook-ups and water, sewer and effluent service  
8 set forth in this agreement, and the City hereby agrees to not assess  
9 or attempt to collect any taxes from such entities or persons;  
10 provided, however, that the City may assess, and the Reservation  
11 water, sewer and effluent users and off-Reservation users of  
12 Reservation effluent shall pay, a special user fee for hook-ups and  
13 water, sewer and effluent service which is hereby agreed to be equal  
14 in rate and amount to the taxes prohibited by this subparagraph. The  
15 City hereby waives all claims, if any, it may have to assess or  
16 collect a City sales tax or equivalent thereof on hook-ups by, or  
17 water or sewer service to, Reservation water and sewer users prior to  
18 the effective date hereof; provided, however, that nothing contained  
19 herein shall obligate the City to refund any sales tax actually paid  
20 by Reservation water and sewer users prior to the effective date  
21 hereof.

22 9.3 If the amounts charged by the City (including all charges,  
23 hook-up fees, other fees, taxes, assessments and other amounts)  
24 throughout its service area for water, sewer or effluent service  
25 exceed the City's costs in providing such service, the amounts charged  
26 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:

Gallon Quantity of Reservation <u>Service</u>	X	City's System-Wide Costs in Providing Service	=	Total Permissible Charge to Reservation (or Reservation Effluent) Users for Service
Gallon Quantity of System-Wide 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.

1       10.0       MISCELLANEOUS

2       10.1       The term of this Agreement shall be in perpetuity; provided,  
3       however, that the City's service obligations shall terminate:

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

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

13      10.2       Unless expressly stated otherwise, the terms employed in  
14      this Agreement shall have the same meaning as is provided by the  
15      Settlement Agreement.

16      10.3       To the extent consistent with the terms of this Agreement  
17      and the Settlement Agreement, all Tribal and City laws, rules, rates,  
18      regulations and policies which are now in effect or may hereafter be  
19      adopted by the City or Tribe shall apply to this Agreement.

20      10.4       The provisions of this Agreement shall inure to the benefit  
21      of, and shall be binding upon, the respective successors and assigns  
22      of the parties hereto.

23      10.5       Each party agrees in good faith to execute such further or  
24      additional documents as may be necessary or appropriate to fully carry  
25      out the intent and purpose of this Agreement.

1     10.6       This Agreement shall become effective on the effective date  
2     of the Settlement Agreement.

3     10.7       This Agreement shall be construed in accordance with all  
4     applicable laws of the United States of America and the State of  
5     Arizona. Nothing contained herein waives the right of the Tribe to  
6     object to the jurisdiction of the courts of the State of Arizona to  
7     adjudicate any disputes arising under this Agreement.

8     10.8       The headings of this Agreement are for reference only and  
9     shall not limit or define the meaning of any provision of this  
10    Agreement.

11   10.9       This Agreement may be executed in duplicate originals, each  
12   of which shall constitute an original Agreement.

13   10.10      To the extent Section 38-511, Arizona Revised Statutes, is  
14   applicable to this Agreement, the City hereby represents that the  
15   persons significantly involved in the initiating, negotiating,  
16   securing, drafting and creating of this Agreement on behalf of the  
17   City are John R. Moffitt, City Attorney, and Brad Huza, Environmental  
18   Services Director, and the Tribe hereby represents that neither Mr.  
19   Moffitt nor Mr. Huza is or has been, as of the date of execution  
20   hereof, an employee or agent of or consultant to the Tribe. The Tribe  
21   also hereby covenants to not employ either Mr. Moffitt or Mr. Huza as  
22   an employee, agent or consultant for a term of at least three years  
23   following the execution hereof.

24   10.11      Any notice to be given hereunder shall have been properly  
25   given or made when received by the office or manager designated  
26   herein, or two (2) days after deposit with the United States Postal

1 Service, certified or registered mail, postage prepaid, addressed as  
2 follows:

3 If to the Tribe:

4 Yavapai-Prescott Indian Tribe  
5 530 East Merritt Avenue  
6 Prescott, Arizona 86301  
7 Attn: Tribal President

8 With a copy to:

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

10 If to the City:

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

13 With copies to:

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

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

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

22 10.12 This Agreement constitutes the entire agreement between the  
23 parties and no understandings or obligations not herein expressly set  
24 forth shall be binding upon them. This Agreement may not be modified  
25 or amended in any manner unless in writing and signed by the parties.  
26

1 IN WITNESS WHEREOF, the parties hereto have executed the  
2 Agreement herein the day and year first above written.  
3

4 YAVAPAI-PRESCOTT INDIAN TRIBE

5  
6 By: Stan Rice Jr  
7 STAN RICE, JR., President

CITY OF PRESCOTT, a municipal  
corporation

8 By: [Signature]  
9 , Mayor

10 Approved:

11 SECRETARY OF THE INTERIOR  
12 UNITED STATES OF AMERICA

13 By: [Signature]  
14 SOLICITOR

15 Approved as to Form:

16 [Signature]  
17 JOHN R. MOFFITT, City Attorney

18 Attest:

19 Marie L. Watson  
20 MARIE L. WATSON, City Clerk  
21  
22  
23  
24  
25  
26

1  
2  
3 EXHIBIT 1.1  
4 TO  
5 WATER SERVICE AGREEMENT:  
6 PREVIOUS TRIBE-CITY AGREEMENTS

- 7 A. Water Service Agreement dated February 16, 1972, recorded  
8 in Book 739, pages 385 through 389, Yavapai County  
9 Recorder's Office, Yavapai County, Arizona, for the  
10 extension of a water main and water service for commercial  
11 and industrial purposes along approximately 5,600 feet of  
12 Yavapai-Prescott Tribal Reservation highway frontage  
13 adjacent to Highway 69.
- 14 B. Sewer Service Agreement dated March 17, 1972, for the  
15 extension of a sewer main and sewage disposal service for  
16 commercial and industrial purposes along approximately  
17 5,600 feet of Yavapai-Prescott Tribal Reservation highway  
18 frontage adjacent to Highway 69.
- 19 C. Supplemental Water and Sewer Service Agreement, dated  
20 October 28, 1975, covering the extension of sewer and water  
21 distribution lines for commercial and industrial purposes  
22 in connection with EDA grant funds Project No. 07-01-01510  
23 to the Yavapai-Prescott Indian Tribe (Jimullah Park).
- 24 D. Agreement for Connection to 8" City Water Main on Yavapai-  
25 Prescott Indian Reservation and Agreement to Grant Easement  
26 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.

- 1 F. Memorandum of Agreement Between the United States of  
2 America, Yavapai-Prescott Indian Tribe and the City of  
3 Prescott, dated March 28, 1975, providing for domestic  
4 water service and sewage disposal service for residential  
5 homes on the Yavapai-Prescott Indian Reservation.  
6
- 7 G. Agreement dated November 20, 1980, between the Yavapai-  
8 Prescott Indian Tribe and the City of Prescott, providing  
9 for water service and sewage disposal service for the  
10 Yavapai-Prescott Indian Reservation and an easement across  
11 that Reservation.
- 12 H. Memorandum of Agreement Among the United States of America  
13 and the Yavapai-Prescott Indian Tribe and the City of  
14 Prescott, Arizona, Yavapai County, Arizona pursuant to  
15 Public Law 86-121, Project Number PH 84-553, dated August,  
16 1985, providing for the financing, construction and  
17 ownership of certain Reservation water and sewer  
18 facilities.
- 19 I. First Amendment to the 1980 Water and Sewer Agreement dated  
20 August 16, 1990, between the Yavapai-Prescott Indian Tribe  
21 and the City of Prescott, providing for the valuation of  
22 the easement granted in the 1980 Agreement and rental  
23 payments on that easement.
- 24 J. Memorandum of Agreement dated April 1993 among the Indian  
25 Health Service, the Yavapai-Prescott Indian Tribe and the  
26 City of Prescott, regarding Project #PH 93-886.

1 EXHIBIT 1.2  
2 TO  
3 WATER SERVICE AGREEMENT:  
4 INSTRUMENTS CONCERNING  
5 RESERVATION WATER AND SEWER LINES

- 6 A. That certain license from the United States of America to  
7 the City of Prescott, for the installation, maintenance,  
8 repair and replacement of a sewer line across a portion of  
9 the Veterans Administration Center Reservation at Whipple,  
10 Arizona, dated February, 1947.
- 11 B. A Deed of Easement from the Administrator of Veterans  
12 Affairs acting for and on behalf of the United States of  
13 America to the city of Prescott for the installation,  
14 maintenance, repair and replacement of a 12" outfall sewer  
15 line across a portion of the land of the Veterans  
16 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.
- 17 C. Deed of Easement from the Administrator of Veterans Affairs  
18 acting for and on behalf of the United States of America to  
19 the City of Prescott for the installation, maintenance,  
20 repair and replacement of an 8" water line across a portion  
21 of the land of the Veterans Administration Center  
22 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.
- 23 D. Grant of Easement for Right of Way from the United States  
24 of America, acting by and through Charles Pitrat,  
25 Superintendent, Truxton Canyon Agency, Bureau of Indian  
26 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

1 the construction, maintenance, operation and repair of a 6"  
2 water line across the Yavapai-Prescott Indian Reservation.

3 F. That certain application for right of way by the City of  
4 Prescott for construction of Ruth Street, dated February  
5 14, 1966, and that certain Resolution No. 2-66 of the  
6 Yavapai-Prescott Community Association dated May 6, 1966,  
7 providing for domestic water service to the Yavapai-  
8 Prescott Indian Community through one meter, approved by  
9 Charles Pitrat on April 7, 1966, subject to the conditions  
10 set forth in Resolution No. 2-66 of the Yavapai-Prescott  
11 Community Association.

12 G. Grant of Easement for Right-of-Way dated December 5, 1980,  
13 between the United States of America, acting by and through  
14 James A. Barber, Superintendent, Truxton Canyon Agency, and  
15 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**

1. The Reservation, established by the Act of June 7, 1935, 49 Stat. 332, and the Act of May 18, 1956, 70 Stat. 157, for the Yavapai-Prescott Indian Tribe, is located in the Little Chino and Upper Agua Fria sub-basins of Arizona, in the Prescott Active Management Area, established by A.R.S. Section 45-411(A)(3).
2. The management goal of the Prescott Active Management Area (AMA), is to achieve balance between annual groundwater withdrawals and natural and artificial recharge (safeyield) 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 safeyield 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.

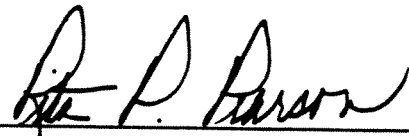
**SECTION 3: EXECUTION**

Yavapai-Prescott Indian Tribe

By:   
STAN RICE, JR, PRESIDENT

4/18/95  
Date

Arizona Department of Water Resources

By:   
RITA P. PEARSON, DIRECTOR

March 23, 1995  
Date

EXHIBIT 9.1

Page 1

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;

EXHIBIT 9.1

Page 2

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

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

20       Nothing herein shall prevent the Tribe from participating with other  
21       entities in further activities to augment the water supply available  
22       to the Prescott Active Management Area and Granite Creek watershed,  
23       or shall prevent the Tribe, its members and the United States on their  
24       behalf from supporting any claim of any party to the Settlement  
25       Agreement filed in the Gila River Adjudication from which the Tribe's  
26       water rights under the Settlement Agreement are satisfied. Nothing

1 herein shall affect the water rights or claims related to any trust  
2 allotment located outside the exterior boundaries of the Tribe's  
3 Reservation of any member of the Tribe; provided, however, that any  
4 water rights determined to exist for such allotments shall not be  
5 exercised for use on the Tribe's Reservation.

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

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

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

23 (c) Except as provided in Paragraph (2) of this Waiver and  
24 Release of Claims, the United States shall not assert any claim  
25 against the State of Arizona and any agency or political subdivision  
26 thereof or any other person, corporation, or municipal corporation,

EXHIBIT 9.1

Page 4

1 in its own right or on behalf of the Tribe and its members based upon  
2 (1) water rights or injuries to water rights of the Tribe and its  
3 members; or (2) water rights or injuries to water rights held by the  
4 United States on behalf of the Tribe and its members.

YAVAPAI-PRESCOTT INDIAN TRIBE

5  
6  
7 By: Alan Ring  
8 President

THE UNITED STATES OF AMERICA

9  
10 By: Adela E. Dees  
11 Assistant Secretary of the Interior for  
12 Indian Affairs

13 By: \_\_\_\_\_  
14 Attorney General of the United States  
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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

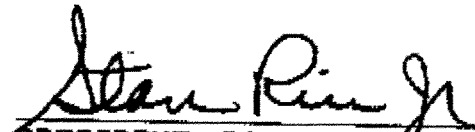
WHEREAS, the Settlement Act requires the Tribe to alienate its contract for the delivery of Central Arizona Project Water and to release its Water Rights claims in the Gila River Adjudication; and

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.

C E R T I F I C A T I O N

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.

  
PRESIDENT, BOARD OF DIRECTORS  
YAVAPAI-PRESCOTT INDIAN TRIBE

ATTEST:

  
SECRETARY, BOARD OF DIRECTORS  
YAVAPAI-PRESCOTT INDIAN TRIBE

COPY

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 1994, Pub. L. 103-434, 108 Stat. 4526 (1994) (hereinafter the "Act"); consideration of the 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;

1 THE COURT FINDS that notice of the special proceeding and notice of the  
2 Master's report and motion have been given as required by law; all claimants in the  
3 Gila River adjudication have been given an opportunity to review and object to the  
4 proposed settlement; a total of nine objections to the proposed settlement have been  
5 filed; four of these objections have been withdrawn voluntarily; four of these  
6 objections have been properly dismissed for failure to comply with orders of the  
7 Court; the Special Master has recommended the summary disposition of the  
8 remaining objection; and the period for exceptions to the Master's report has passed;

9 IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

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

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

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

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

20 Each year, the Tribe shall be entitled to store, divert and use: (a) as its  
21 Minimum Annual Entitlement, fifty (50) percent of the flow of Granite Creek, as  
22 measured at the State Highway 89 bridge across Granite Creek adjacent to the  
23 Reservation, until it has diverted five hundred and fifty (550) acre-feet per year (ac-  
24 ft/yr); *provided, however*, that if the existing and customary beneficial users of  
25 surface water by CVID pursuant to the rights to Granite Creek surface water are  
26 reduced to an annual entitlement of less than one thousand one hundred (1,100) ac-  
27 ft/yr by a determination of the Court in the Gila River adjudication which is not  
28

1 subject to further appeal, then the Tribe's Minimum Annual Entitlement shall be  
2 reduced by an amount equal to one-half the difference between one thousand one  
3 hundred (1,100) ac-ft/yr and CVID's reduced entitlement; and (b) as its Maximum  
4 Annual Entitlement, an additional ten (10) percent of that portion of the flow of  
5 Granite Creek which exceeds 1,100 ac-ft/yr, as measured at the State Highway 89  
6 bridge across Granite Creek adjacent to the reservation, up to a total combined  
7 diversion of one thousand (1,000) ac-ft/yr; *provided, however,* that if CVID's  
8 existing and customary beneficial uses of Granite Creek surface water are reduced by  
9 virtue of a determination by the Court in the Gila River adjudication, which is not  
10 subject to further appeal, that one or more of such rights is or are invalid, the Tribe's  
11 total Maximum Annual Entitlement pursuant to this Subparagraph shall be  
12 reduced by the same percentage as the percentage reduction in CVID's use rights.

13 The priority of storage, diversion and use of surface water by the Tribe shall be  
14 the same as the priorities determined by the confirmation of CVID's right to Granite  
15 Creek water in the Gila River adjudication. The Tribe's annual entitlement to  
16 Granite Creek surface water shall not be carried over from year to year; *provided,*  
17 *however,* that: (i) any water stored by the Tribe during a given year may be left in  
18 storage and/or consumptively used by the Tribe in subsequent years without such  
19 storage and/or use being counted against the Tribe's annual entitlements for such  
20 subsequent years; (ii) if the flow of Granite Creek is insufficient in any year to permit  
21 the Tribe and CVID each to divert five hundred and fifty (550) ac-ft/yr, then an  
22 amount equal to the difference between the amount the Tribe actually diverts in  
23 that year and its five hundred and fifty (550) ac-ft/yr Minimum Annual Entitlement  
24 shall be carried forward from year to year (but not to exceed four years) as a  
25 Deficiency until the Tribe is able to recover such Deficiency; and (iii) the Tribe's total  
26 Maximum Annual Entitlement shall be increased in any given year by an amount  
27 equal to the sum of the Deficiencies carried forward from the preceding four years.

28

1 If the Tribe has the right to divert, and does divert, an amount in excess of one  
2 thousand (1,000) ac-ft/yr to recover its accumulated deficiencies, then the Tribe's  
3 accumulated Deficiencies shall be reduced by an amount equal to such excess. All  
4 such excess diversions shall be applied to the earliest deficiency still being carried  
5 forward. Deficiencies older than four years shall lapse.

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

9 2. In addition to the Tribe's right to surface water from Granite Creek, the  
10 Tribe shall have the permanent right to withdraw all groundwater beneath its  
11 reservation for on-reservation beneficial use in accordance with any groundwater  
12 management plan which may be developed by the Tribe pursuant to Section 11(c) of  
13 the Act. To the extent that groundwater beneath the Tribe's reservation remains  
14 subject to this Court's adjudication jurisdiction, the Court retains jurisdiction over  
15 the groundwater to ensure that the Tribe's groundwater use complies with Section  
16 111(c) of the Act, the settlement agreement, and this judgment.

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

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

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

26 THERE BEING NO JUST REASON FOR DELAY, this partial judgment is  
27 properly deemed final pursuant to ARIZ. R. CIV. P. 54(b).  
28

1 WHEREFORE, the Court directs the entry of judgment, pursuant to the  
2 provision of ARIZ. R. CIV. P. 54(b).

3 DATED this 15 day of December 1995.

4  
5 SUSAN R. BOLTON,  
JUDGE OF THE SUPERIOR COURT

6 SUSAN R. BOLTON  
7 *Judge of the Superior Court*  
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THIS IS A CONFORMED COPY OF INSTRUMENT  
RECORDED IN BOOK 3022  
PAGE 213 DATE 5-31-18 TIME 13:10  
MARGO W. CARSON, RECORDER  
C. K. Korman DEPUTY

Caption: Intergovernmental Agreement - CVID

DO NOT REMOVE

THIS IS PART OF THE OFFICIAL DOCUMENT

## 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 delivery 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**

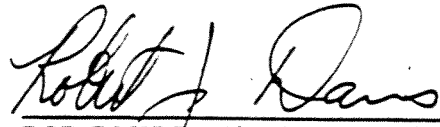
BY THE COUNCIL

City Clerk

Date

5/30/95  
Kes. 710. 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

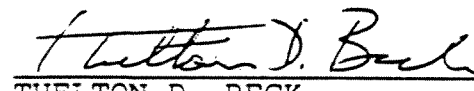
ATTEST:

  
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

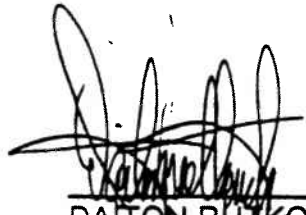
WHEREAS, it would be to the benefit of the citizens of Prescott and the users of the Chino Valley Irrigation District for the City of Prescott to be able to utilize waters not otherwise needed for recharge purposes.

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"

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 30<sup>th</sup> day of MAY, 1995.



\_\_\_\_\_  
DAYTON 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).

1.2 In 1980 and 1983 the Secretary of the Interior allocated to the Tribe 500 acre-feet of Central Arizona Project water per year for the maintenance of the Tribe's tribal homeland, 48 Fed. Reg. 12446, 12448 (Mar. 24, 1983).

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".

2.3 "The Act" shall mean the Yavapai-Prescott Indian Tribe Water Settlement Act of 1994, 103 P.L. 434 (1994).

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 43 U.S.C. § 390uu.


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

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.  
Stan Rice, Jr.  
President


Date: \_\_\_\_\_

CITY OF SCOTTSDALE, an Arizona  
municipal corporation

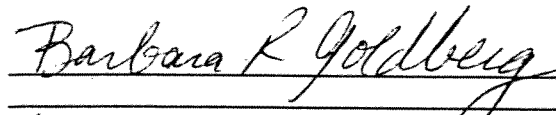
By:   
Herbert R. Drinkwater  
Mayor

Date: 12/27/95

Attest:

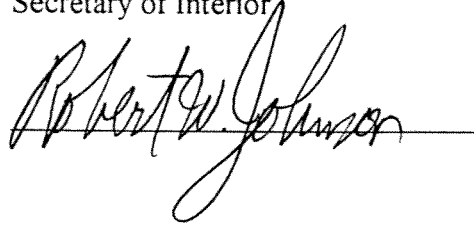
  
Sonia Robertson, City Clerk

Approved as to form:


  
City Attorney

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

By:

  
Robert W. Johnson

LEGAL REVIEW AND APPROVAL:

  
Field Solicitor

Dated: 9/16/96



ASSIGNMENT OF RIGHTS AND ASSUMPTION  
OF OBLIGATIONS OF CENTRAL ARIZONA PROJECT  
WATER CONTRACT

THIS ASSIGNMENT is made and entered into this 27<sup>th</sup> 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;

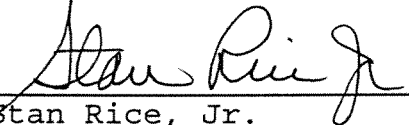
(d) The Tribe has received payment of \$540,000.00 from the Verde River Basin Water Fund pursuant to the Exchange

Agreement and §§ 105 and 106 of the Yavapai-Prescott Indian Tribe Water Settlement Act of 1994, P.L. 103-434 (1994).

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

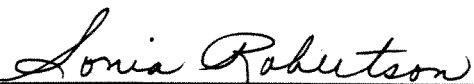
Date: \_\_\_\_\_

CITY OF SCOTTSDALE, an Arizona  
municipal corporation

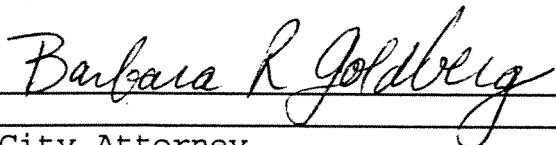
By:   
Herbert R. Drinkwater  
Mayor

Date: 12/27/95

Attest:

  
Sonia Robertson, City Clerk

Approved as to form:

  
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



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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

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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

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4 UNITED STATES  
5 DEPARTMENT OF THE INTERIOR  
6 OFFICE OF THE SECRETARY  
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8 AMENDATORY AND SUPPLEMENTAL CENTRAL ARIZONA PROJECT  
9 WATER DELIVERY CONTRACT BETWEEN  
10 THE UNITED STATES AND THE YAVAPAI-PRESCOTT INDIAN TRIBE  
11  
12

13 PREAMBLE  
14

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

26 WITNESSETH, THAT:  
27  
28

1 EXPLANATORY RECITALS

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

7  
8 WHEREAS, on December 11, 1980, the United States and the Contractor entered into a contract  
9 entitled "Central Arizona Project Indian Water Delivery Contract Between the United States and the  
10 Yavapai-Prescott Tribe," hereinafter referred to as the "CAP Water Delivery Contract," whereby the  
11 United States agreed to deliver or cause to be delivered up to 500 acre-feet of CAP water per year to the  
12 Contractor for tribal homeland purposes; and

13  
14 WHEREAS, the Yavapai-Prescott Indian Tribe Water Rights Settlement Act of 1994,  
15 hereinafter referred to as the "Settlement Act", was enacted, among other things, to provide for  
16 resolution of all water rights claims between and among the Contractor, the city of Prescott, the Chino  
17 Valley Irrigation District, the State of Arizona, and the United States and to provide the Contractor with  
18 long term, reliable water supplies for the orderly development and maintenance of the Contractor's  
19 Reservation; and

20  
21 WHEREAS, §105 of the Settlement Act authorized and directed the Secretary to approve the  
22 assignment of the Contractor's CAP water delivery contract to another entity so as to provide funds for  
23 deposit into the Verde River Basin Water Fund for the benefit of the Contractor; and

24  
25 WHEREAS, prior to the assignment of the Contractor's CAP Water Delivery Contract, it is  
26 necessary to amend and supplement such contract to provide for use of the Contractor's CAP water off  
27 the Tribe's Reservation and to further define the obligation of the Contractor to repay to the United  
28

1 States the capital costs of the CAP Main System that are properly allocable to the Contractor; and

2  
3 WHEREAS, both the United States and the Contractor desire to amend and supplement the  
4 Contractor's CAP Water Delivery Contract so as to facilitate the assignment of the Tribe's CAP water  
5 Delivery Contract, as contemplated by the Settlement Act;

6  
7 NOW, THEREFORE, in consideration of the mutual and dependent covenants herein contained,  
8 its is agreed as follows:

9  
10 CONTRACT PURPOSE

11  
12 3. The purpose of this contract is to amend and supplement the CAP water Delivery Contract.  
13 Except as expressly amended and supplemented herein, the remaining terms and conditions of the CAP  
14 Water Delivery Contract shall remain in full force and effect. The defined terms in the CAP Water  
15 Delivery Contract shall have the same meaning in this Contract, and shall be capitalized herein to  
16 designate their use as defined terms.

17  
18  
19 AMENDMENT OF AND SUPPLEMENT TO CAP WATER DELIVERY CONTRACT

20  
21 4. (a) The following new subsection designated as 4.3(e)(3) is hereby added to the CAP Water  
22 Delivery Contract:

23 "4.3(e)(3) Subject to the approval of the Secretary, the Contractor may assign this  
24 contract to another entity pursuant to §105 of the Yavapai-Prescott Indian Tribe Water Rights Settlement  
25 Act of 1994, and the assigned water may be used off of the Contractor's Reservation."

26  
27 (b) Subsection 6(a) of the CAP Water Delivery Contract is hereby deleted and replaced with the  
28

1 following:

2  
3 "6(a)(1) After consultation with the Contractor, the Secretary has determined that the  
4 Contractor's allocation of CAP Water will be utilized solely for municipal and industrial purposes. In  
5 accordance with Federal Reclamation law, the Contractor is obligated to repay the United States the  
6 capital costs of the Main System which are properly allocable to municipal and industrial water use,  
7 including interest during construction at a rate of 3.342 percent per annum. Such costs must be repaid,  
8 with interest on the unpaid balance at a rate of 3.342 percent per annum, over a period of time  
9 beginning with the date that the Contractor puts Project Water to beneficial use or assigns this contract  
10 and ending 50 years from January 1 of the year following the year of issuance of the notice of  
11 substantial completion for the CAP water supply system, as such system is defined in the December 1,  
12 1988, contract entitled "Contract Between the United States and the Central Arizona Water  
13 Conservation District for Delivery of Water and Repayment of Costs of the Central Arizona Project,  
14 herein after referred to as the "Master Repayment Contract.

15  
16 (a)(2) The Secretary has determined that the Contractor's estimated repayment  
17 obligation is \$1,061,000. The Secretary will notify the Contractor of its final repayment obligation in  
18 writing at such time as the final allocation of Project costs has been completed.

19  
20 (a)(3) Notwithstanding the obligation of the Contractor to repay all of the Main System  
21 costs allocable to the Contractor for municipal and industrial water supply purposes in accordance with  
22 subsections (a)(1) and (a)(2) above, the Secretary has determined that the appropriate charge for the  
23 Contractor to pay is that charge shown in the schedule below. Payments shall be made in equal  
24 semi-annual installments on or before June 1 and December 1 of each year based on a maximum  
25 entitlement of 500 acre-feet per each year multiplied by the payment rates set forth in the schedule. The  
26 initial semi-annual payment shall be due on or before the June 1 or December 1 following any  
27 assignment of the CAP Water Delivery Contract, as hereby amended. The payments will be due

1 regardless of the quantity of Project Water ordered by or delivered to the Contractor. Receipt of such  
2 payments from the Contractor will satisfy in full the obligation of the Contractor to repay the costs of  
3 the Main System that are allocable to the Contractor. The United States reserves the right, after  
4 consultation with the Contractor, to adjust future payments due under the schedule below in writing  
5 based solely on adjustments that are made in the non-Indian municipal and industrial capacity charge  
6 by the Central Arizona Water Conservation District under the non-Indian municipal and industrial water  
7 service subcontracts to collect sufficient revenues to repay that entity's repayment obligation to the  
8 United States under the Master Repayment Contract.

Calendar Year	Payment Due Per Acre-Foot
1996	\$30
1997	39
1998	48
1999	48
2000 through 2043	54

19 (a)(4) Any capital costs that are not amortized by the foregoing repayment schedule,  
20 as it may be adjusted, shall be eliminated in accordance with the authorities provided in 25 U.S.C. §386a  
21 and §111(b) of the Yavapai-Prescott Indian Tribe Water Rights Settlement Act (108 Stat. 4531). The  
22 amount of capital cost to be eliminated shall be determined in light of the repayment schedule set forth  
23 herein, as may be adjusted, and shall be reflected in the cost allocation for the Central Arizona Project.”

1 IN WITNESS WHEREOF, the Parties hereto have executed this Amendatory and Supplemental  
2 Contract the day and year above written.

3  
4 THE UNITED STATES OF AMERICA

5  
6 By: Robert W. Johnson  
7 Regional Director  
8 Lower Colorado Region  
9 Bureau of Reclamation

10 ATTEST:

11 YAVAPAI-PRESCOTT INDIAN TRIBE

12 By: \_\_\_\_\_  
13 Secretary

14  
15  
16  
17  
18 By: Stan Rice Jr  
19 President.



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 27<sup>th</sup> 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. <sup>6</sup>~~2~~-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.

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

<u>Payment for the calendar year of</u>	<u>Payment due for each acre- foot of purchased capacity</u>
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.

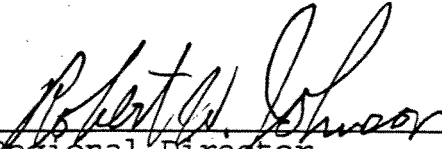
11. Except as amended herein, all terms, conditions, and provisions of the Water Service Subcontract shall remain unchanged and in full force and effect.

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: [Signature]  
Secretary

By: [Signature]  
President

CITY OF SCOTTSDALE

Attest: Bela Christ for  
City Clerk

By: Sam K. Camzane  
Mayor

Approved as to form:

Barbara R. Goldberg  
City Attorney

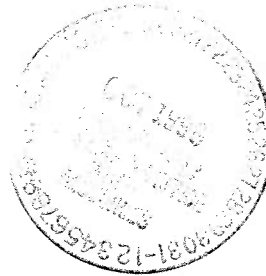
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• "Most Livable City" U.S. Conference of Mayors •

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,

A handwritten signature in black ink, appearing to read "Ricka M. Gallagher". The signature is fluid and cursive, with a large, stylized "G" at the end.

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

Enclosure

Agreement No. 950126

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 <sup>27</sup> <sup>1996</sup>, 1995, 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).

1.2 In 1983 the Secretary of the Interior allocated to Prescott 7,127 acre-feet of Central Arizona Project municipal and industrial ("M&I") water per year, 48 Fed. Reg. 12446, 12448 (Mar. 24, 1983).

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. <sup>5</sup>~~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. <sup>5</sup>~~P~~-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.

2.13 "Settlement Act" shall mean The Yavapai-Prescott Indian Tribe Water Rights Settlement Act of 1994, Pub.L.No. 103-434, 108 STAT. 4526 (1994).

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 disbursement 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
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With copy to:	City of Prescott Prescott City Attorney P. O. Box 2059 Prescott, Arizona 86302
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If to Scottsdale:	City of Scottsdale Water Resources Department 9388 East San Salvadore Scottsdale, Arizona 85258 Attention: Roger Klinger
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If to CAWCD:	Central Arizona Water Conservation District 23636 North 7th Street Phoenix, Arizona 85024 Attention: David S. "Sid" Wilson, Jr.
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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 27<sup>th</sup> day of September, <sup>1996</sup>~~1995~~.

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

APPROVED AS TO FORM:

John R. Moffitt  
JOHN R. MOFFITT  
City Attorney

ATTEST:

Marie L. Watson  
MARIE L. WATSON  
City Clerk

DATED this 27th day of December, 1995.

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

APPROVED AS TO FORM:

Barbara R. Goldberg  
Barbara R. Goldberg  
City Attorney

ATTEST:

Lonia Robertson  
Lonia Robertson  
City Clerk

Legal Review and Approval

By: Pat Malin  
Field Solicitor  
Phoenix, Arizona

Date: 9/11/96

THE UNITED STATES OF AMERICA

By: Robert W. Johnson  
By Commissioner  
Bureau of Reclamation

Date: September 27, 1996

CENTRAL ARIZONA WATER  
CONSERVATION DISTRICT

By: [Signature]  
President

Date: 9/5/96

Attest: [Signature]  
Secretary



Agreement No. 950133

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 27<sup>th</sup>  
day of September <sup>1996</sup> ~~1995~~, 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-WO283 (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

(f) Prescott has received payment from the Verde River Basin Water Fund (the "Water Fund"), pursuant to the Exchange Agreement and §§ 105 and 106 of the Yavapai-Prescott Indian Tribe Water Settlement Act of 1994, P.L. 103-434, 108 Stat. 4526 (1994), of all monies deposited by Scottsdale into the Water Fund pursuant to Paragraph 5.2 of the Exchange Agreement.

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 27<sup>th</sup> day of September, 1995 <sup>1996</sup>

THE CITY OF PRESCOTT, an  
Arizona municipal corporation

By:

Paul S. Daly  
PAUL S. DALY, Mayor

APPROVED AS TO FORM:

John R. Moffitt  
JOHN R. MOFFITT  
City Attorney

ATTEST:

Marie L. Watson  
MARIE L. WATSON  
City Clerk

DATED this 27th day of December, 1995.

THE CITY OF SCOTTSDALE, an  
Arizona municipal corporation

By:

Herbert R. Drinkwater  
Herbert R. Drinkwater, Mayor

APPROVED AS TO FORM:

Barbara R. Goldberg  
Barbara R. Goldberg  
City Attorney

ATTEST:

Lonia Rodutson  
Lonia Rodutson  
City Clerk

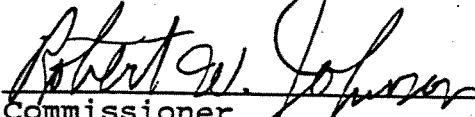
APPROVAL

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.

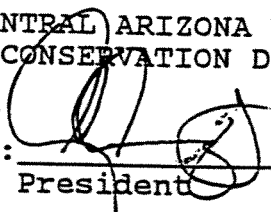
CAWCD and the United States shall release Prescott from its obligations under the Subcontract, including but not limited to the obligations under Subarticles 5.2(c) and 5.2(d) of the Subcontract to pay charges in lieu of ad valorem taxes, upon the date that the foregoing Assignment becomes effective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

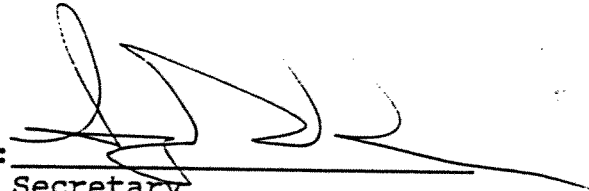
Legal Review and Approval

By:   
Field Solicitor  
Phoenix, Arizona

THE UNITED STATES OF AMERICA  
By:   
for 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.

<u>Payment for the</u> <u>calendar year of</u>	<u>Payment due for each acre-</u> <u>foot of purchased capacity</u>
1988-1993	\$5
1994	6
1995	8

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

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: \_\_\_\_\_  
Field Solicitor  
Phoenix, Arizona

By: \_\_\_\_\_  
Regional Director  
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.Scotsamd.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 disbursement 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 disbursal of the funds deposited into the Escrow without both of the Conditions to Disbursal 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  
City Attorney

\_\_\_\_\_  
MARIE L. WATSON  
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

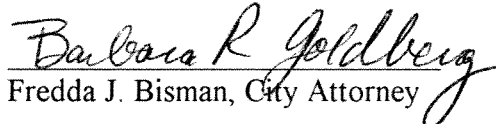
By:

  
Herbert R. Drinkwater, Mayor

ATTEST:

  
Sonia Robertson, City Clerk

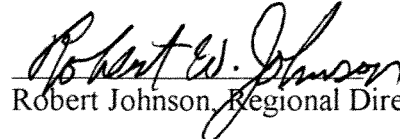
APPROVED AS TO FORM:

  
Fredda J. Bisman, City Attorney

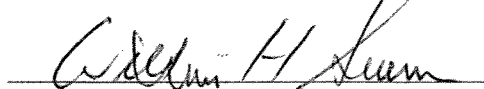
Dated: 12/27/95

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

By:

  
Robert Johnson, Regional Director

LEGAL REVIEW AND APPROVAL:

  
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 R. Mills  
Walter Mills, Area Director  
Phoenix Area Office

LEGAL REVIEW AND APPROVAL:

Seamus H. [Signature]  
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: \_\_\_\_\_

Dated: \_\_\_\_\_

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

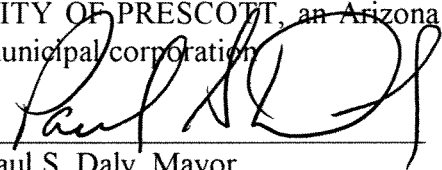
By: \_\_\_\_\_  
Walter Mills, Area Director  
Phoenix Area Office

LEGAL REVIEW AND APPROVAL:


\_\_\_\_\_  
Field Solicitor

Dated: \_\_\_\_\_

CITY OF PRESCOTT, an Arizona  
municipal corporation

By:   
Paul S. Daly, Mayor

ATTEST:

  
Marie L. Watson, City Clerk

Dated: 12/26/95

#95-147

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: \_\_\_\_\_

**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

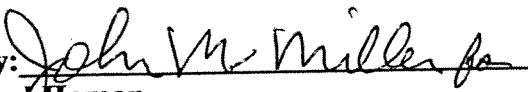
1. Within thirty (30) days of the execution of the Agreement, the Tribe shall establish a trust account ("Tribe's Trust Account") with a federally insured financial institution acceptable to the Tribe, into which the Tribe's Fund Proceeds may be deposited and administered in accordance with the Act.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

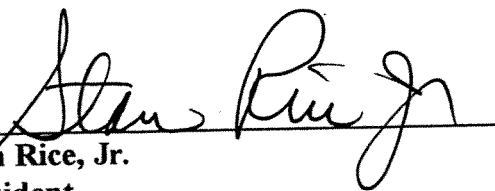
Office of Trust Funds Management  
Attention: Chief, Division of Quality Assurance  
505 Marquette N. W., Suite 1000  
Albuquerque, New Mexico 87102  
(505) 248-5751

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

**SECRETARY OF THE INTERIOR**

By:   
Paul Homan  
Special Trustee for American Indians

**YAVAPAI-PRESCOTT INDIAN TRIBE**

By:   
Stan Rice, Jr.  
President

RESOLUTION NO. 98-05  
OF THE GOVERNING BODY OF THE  
YAVAPAI-PRESCOTT 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.

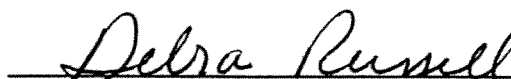
BE IT FURTHER RESOLVED that the Yavapai-Prescott Indian Tribe Board of Directors authorizes the President to request the Office of Trust Management take the necessary and appropriate measures to transfer the Tribe's Verde River Basin Water Funds into Tribal accounts and control.

C E R T I F I C A T I O N

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).

  
PRESIDENT, BOARD OF DIRECTORS  
YAVAPAI-PRESCOTT INDIAN TRIBE

ATTEST:

  
SECRETARY/TREASURER, BOARD OF DIRECTORS  
YAVAPAI-PRESCOTT INDIAN TRIBE

Cathy W.



PRESCOTT ♦ 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,

  
Stan Rice, Jr.  
President

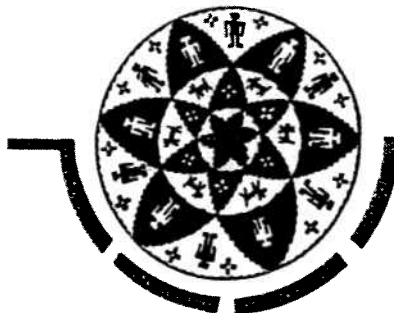
SRJ:KN:wes

**RECEIVED**

FEB 27 1998

PHOENIX AREA OFFICE  
LAND AND WATER RESOURCES

Cathy W.



PRESCOTT ♦ 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,

  
Stan Rice, Jr.  
President

SRJ:KN:wes

**RECEIVED**

FEB 27 1998

PHOENIX AREA OFFICE  
LAND AND WATER RESOURCES

#98-014

**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 29<sup>th</sup> 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:

AGREEMENT

#98-014

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. Mills for  
Paul Homan  
Special Trustee for American Indians

CITY OF PRESCOTT

By: Paul S. Daly  
PAUL S. DALY, Mayor

ATTEST:

Marie L. Watson  
MARIE L. WATSON  
City Clerk

APPROVED AS TO FORM:

John R. Moffitt  
JOHN R. MOFFITT  
City Attorney



# CITY OF PRESCOTT

## LEGAL DEPARTMENT

201 South Cortez  
Post Office Box 2059  
Prescott, Arizona 86302-2059

Tele: (520) 776-6274  
Tdd: (520) 778-5680  
Fax: (520) 776-6325

John R. Moffitt  
Ralph M. Hess  
Glenn A. Savona  
R. Keith Carson

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

**RECEIVED**

FEB 06 1998

PHOENIX AREA OFFICE  
LAND AND WATER RESOURCES