

UNITED STATES  
DEPARTMENT OF THE INTERIOR

Southern Arizona Water Rights Settlement Act of 1982

CONTRACT BETWEEN THE UNITED STATES AND THE PAPAGO TRIBE  
OF ARIZONA TO PROVIDE WATER AND TO SETTLE CLAIMS TO  
WATER

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UNITED STATES

DEPARTMENT OF THE INTERIOR

SOUTHERN ARIZONA WATER RIGHTS SETTLEMENT ACT OF 1982

CONTRACT BETWEEN THE UNITED STATES AND THE PAPAGO TRIBE  
OF ARIZONA TO PROVIDE WATER AND TO SETTLE CLAIMS TO WATER.

THIS CONTRACT is made and entered into as of the 11<sup>th</sup> day of October, 1983, pursuant to the Southern Arizona Water Rights Settlement Act (P.L. 97-293, 96 Stat. 1274) ("the Act") by and between the Secretary of the Interior ("Secretary"), on behalf of the United States of America, and the Papago Tribe of Arizona ("Tribe") in consideration of the recitals and mutual covenants and agreements set forth herein and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged as follows:

SECTION 1

Recitals

1.1 Sec. 301 of the Act makes the findings that--

- (1) water rights claims of the Papago Tribe with respect to the San Xavier Reservation and the Schuk Toak District of the Sells Papago Reservation are the subject of existing and prospective lawsuits against numerous parties in southern Arizona, including major mining companies, agricultural interests, and the City of Tucson;

- (2) these lawsuits not only will prove expensive and time consuming for all-participants, but also could have a profound adverse impact upon the health and development of the Indian and non-Indian economies of Southern Arizona;
- (3) the parties to the lawsuits and others interested in the settlement of the water rights claims of the Papago Indians within the Tucson Active Management Area and that part of the Upper Santa Cruz Basin not within that area have diligently attempted to settle these claims and the Federal Government, by providing the assistance specified in the Act, will make possible the execution and implementation of a permanent settlement agreement;
- (4) it is in the long-term interest of the United States, the State of Arizona, its political subdivisions, the Papago Indian Tribe, and the non-Indian community of southern Arizona that the United States Government assist in the implementation of a fair and equitable settlement of the water rights claims of the Papago Indians

respecting certain portions of the Papago  
Reservation; and

(5) the settlement contained in the Act will--

(A) provide the necessary flexibility in  
the management of water resources  
and will encourage allocation of  
those resources to their highest  
and best uses; and

(B) insure conservation and management of  
water resources in a manner consistent  
with the goals and programs of the  
State of Arizona and the Papago Tribe.

## SECTION 2

### Definitions

2.1. In this contract, the term:

- (A) "acre-foot" means the amount of water  
necessary to cover one acre of land to a  
depth of one foot;
- (B) "Act" means the Southern Arizona Water  
Rights Settlement Act of 1982, the Act of  
October 12, 1982, Title III of P.L. 97-293;
- (C) "Central Arizona Project" means the project  
authorized under Title III of the Colorado

River Basin Project Act (82 Stat. 887;  
43 U.S.C. 1521, et seq.);

- (D) "December 11, 1980, agreement" means the Central Arizona Project water delivery contract between the United States and the Papago Tribe;
- (E) "Papago Tribe" or "Tribe" means the Papago Tribe of Arizona, organized under section 16 of the Act of June 18, 1934, (48 Stat. 987; 25 U.S.C. 476);
- (F) "Secretary" means the Secretary of the Interior, or his duly authorized representative;
- (G) "subjugate" means to prepare land for the growing of crops through irrigation;
- (H) "Tucson Active Management Area" means the area of land corresponding to the area initially designated as the Tucson Active Management Area pursuant to the Arizona Groundwater Management Act of 1980, laws 1980, fourth special session chapter 1.

### SECTION 3

#### Release, Waiver and Dismissal

3.1. Subject to the reservations and conditions hereinafter set forth, the Tribe:

(A) releases and waives--

- (i) any and all claims of water rights or injuries to water rights (including rights in both ground water and surface water) within the Tucson Active Management Area and that part of the Upper Santa Cruz Basin not within said area, from time immemorial to the effective date of this contract, which the Papago Tribe has against the United States, the State of Arizona and any agency or political subdivision thereof, or any other person, corporation, or municipal corporation, arising under the laws of the United States or the State of Arizona; and
- (ii) any and all future claims of water rights (including water rights in both ground water and surface water) within the Tucson Active Management Area and that part of the Upper Santa Cruz Basin not within said area, from and after the effective date of this contract, which the Papago Tribe has

against the United States, the State of Arizona, and any agency or political subdivision thereof, or any other person, corporation or municipal corporation, arising under the laws of the United States or the State of Arizona;

(B) agrees to file with the United States District Court for the District of Arizona a stipulation for voluntary dismissal with prejudice of Civil No. 75-39 TUC (JAW);

(C) agrees to limit the quantity of ground water pumped in each year from beneath the San Xavier Reservation to ten thousand (10,000) acre feet;

(D) agrees to limit the quantity of ground water pumped in each year from beneath the eastern Schuk Toak District of the Sells Papago Reservation which lies within the Tucson Active Management Area to that quantity pumped therefrom in the year immediately preceding January 1, 1981.

Nothing in subsections (C) or (D) shall restrict the Tribe's

right to drill wells and withdraw ground water from the lands on the San Xavier Reservation and the eastern Schuk Toak District of the Sells Papago Reservation located within the Tucson Active Management Area if such wells have a capacity of less than thirty-five (35) gallons per minute and are used only for domestic and livestock purposes.

3.2. Notwithstanding the provisions of paragraph 3.1, the release and waiver referred to in subsection (A) and the agreement referred to in subsection (B) shall take effect only on condition and at such time as--

(A) the trust fund referred to in section 12 of this contract is in existence and the full amount authorized to be appropriated to the trust fund (\$15,000,000) has been appropriated by Congress, and transferred, together with accrued interest, to the authorized governing body of the Papago Tribe;

(B) the City of Tucson and the Secretary have executed an agreement wherein the City will make immediately available to the Secretary, without payment to the City, such quantity of reclaimed water treated to secondary standards as is adequate, after evaporative losses, to deliver annually, as contemplated in section

305(a) of the Act, twenty-eight thousand two hundred (28,200) acre-feet of water for the Secretary to dispose of as he sees fit;

(C) the Secretary and the City of Tucson, the State of Arizona, Anamax Mining Company, Cyprus Pima Mining Company, American Smelting and Refining Company, Duval Corporation, and Farmers Investment Company agree that funds will be contributed, in accordance with paragraphs (1)(B) and (2) of subsection (b) of section 313 of the Act to the Cooperative Fund established under subsection (a) of such section.

3.3. Within thirty days after receipt of written notice from the Secretary that the conditions referred to in subsection 3.2 have been met, the Tribe shall file the stipulation for voluntary dismissal referred to in subsection 3.1 (B).

3.4. Nothing in this contract shall be construed as a waiver or release by the Tribe of any claim where such claim arises under the Act or this contract.

3.5. The Tribe agrees that any entitlement of any individual member of the Tribe to water, including both ground and surface water, within the Tucson Active Management Area and that part of the Upper Santa Cruz Basin not

within said area shall be satisfied out of the water resources provided pursuant to the Act and this contract.

SECTION 4

Breach of Contract- Damages

4.1. If the Secretary is unable to acquire and deliver quantities of water adequate to fulfill his obligations under this contract or the Act, he shall pay damages in an amount equal to--

- (A) the actual replacement costs of such quantities of water as are not acquired and delivered, where a delivery system has not been completed on or before October 12, 1992; or
- (B) the value of such quantities of water as are not acquired and delivered, where a delivery system is completed.

4.2. For the purposes of this contract, the term "replacement costs" means the reasonable costs of acquiring and delivering water from sources within the Tucson Active Management Area and that part of the Upper Santa Cruz Basin not within that area. Such costs shall include costs of necessary construction amortized in accordance with standard Bureau of Reclamation procedures. No costs associated with the acquisition and delivery of water from sources outside the Tucson Active Management Area and that part of the Upper

Santa Cruz Basin not within that area shall be used to establish replacement cost under this contract. The term "value" means the value attributed to the water based on the Tribe's anticipated or actual use of the water or its fair market value, whichever is greater.

4.3. The Tribe shall file with the Secretary, by certified mail addressed to the official designated in section 23 of this contract, any claim for damages under this contract. The claim shall include the Tribe's estimate of the quantity of undelivered water, the use to which the Tribe anticipated putting the undelivered water, the actual use to which the Tribe put any water that was delivered, a statement of the date or dates of the alleged breach of this contract, and a justification for the amount of damages claimed. The Secretary shall either accept or deny in writing the Tribe's claim within ninety (90) days after receipt thereof. Failure of the Secretary to accept, accept in part, or deny the Tribe's claim within the ninety (90) days shall constitute a denial of the Tribe's claim.

In the event the Secretary accepts the Tribe's claim or any part thereof and elects to pay damages to the Tribe from the Cooperative Fund provided for in section 313 of the Act and section 15 of this contract, he may pay said damages only from interest accruing to the Fund that is not needed to pay water acquisition and delivery costs under

subsections 15.2 (A) and 15.2 (B) of this contract. In the event that the Tribe's damages claim is in excess of funds available from the Cooperative Fund for that purpose or in the event the Secretary elects not to pay or denies, for any reason, any part of the Tribe's claim, the Tribe shall have the right to seek an adjudication of its claim for any damages in accordance with subsection 15.2(C) in the United States Claims Court under Section 1505 of Title 28, U.S.C.

SECTION 5

Water Deliveries--CAP

5.1. As required by the Act, the Secretary, acting through the Bureau of Reclamation, shall as soon as possible, but no later than October 12, 1992, deliver annually from the main project works of the Central Arizona Project twenty-seven thousand (27,000) acre-feet of water suitable for agricultural use to the San Xavier Reservation, and ten thousand eight hundred (10,800) acre-feet of water suitable for agricultural use to the eastern Schuk Toak District of the Sells Papago Reservation in accordance with the provisions of this contract. Except as otherwise provided in the Act or this contract, said water deliveries shall be made in such amounts, and according to such terms and conditions, as are set forth in the December 11, 1980, agreement.

5.2. The Secretary, acting through the Bureau of Reclamation in consultation with the Tribe, as soon as possible, but not later than October 12, 1992, shall--

- (A) improve and extend the existing irrigation system on the San Xavier Reservation, including deepening, lining, replacement or relocation of existing wells;
- (B) design and construct within the San Xavier Reservation and within the eastern Schuk Toak District of the Sells Papago Reservation, such additional canals, laterals, farm ditches and irrigation works as are necessary for the efficient distribution for agricultural purposes of the water referred to in subsection 5.1 of this section.

5.3. The Tribe agrees to subjugate, at no cost to the United States, the land for which the distribution systems in subsection 5.2(B) are to be planned, designed and constructed by the Secretary. Following completion of those distribution systems and upon delivery of water referred to hereinabove, the Tribe further agrees to assume responsibility, through the Tribe or its members or an entity designated by the Tribe, as appropriate, for the operation, maintenance and replacement of those systems in accordance with the first section of the Act of August 1, 1914 (38 Stat. 583; 25 U.S.C. 385).

5.4. To meet his obligation for delivering the quantities of water referred to hereinabove, the Secretary shall, acting through the Bureau of Reclamation, as part of the Central Arizona Project, design and construct and without cost to the Papago Tribe, operate, maintain and replace such facilities as are appropriate including any aqueduct and appurtenant pumping facilities, powerplants, and electrical power transmission facilities as may be necessary for such purposes, and deliver such water to the southern boundary of the San Xavier Reservation, and to the boundary of the Schuk Toak District of the Sells Papago Reservation, at points agreed to by the Secretary and the Tribe which are suitable for delivery to the Reservation distribution systems.

#### SECTION 6

##### Water Deliveries - Non CAP

6.1. As required by the Act, the Secretary, as soon as possible, but not later than October 12, 1992, shall deliver annually twenty-three thousand (23,000) acre-feet of water suitable for agricultural use to the San Xavier Reservation, and deliver annually five thousand two hundred (5,200) acre-feet of water suitable for agricultural use to the eastern Schuk Toak District of the Sells Papago Reservation.

6.2. To make available and deliver such water, the Secretary, acting through the Bureau of Reclamation,

shall, subject to the conditions contained in the Act, design, construct, operate, maintain, and replace such facilities as are appropriate for the delivery of said water. The Secretary shall not construct a separate delivery system to deliver reclaimed water acquired pursuant to section 307(a)(1)(A) of the Act to the San Xavier Reservation and the Schuk Toak District of the Sells Papago Reservation.

6.3. The Tribe shall be responsible for the cost of design, construction, operation, maintenance and replacement of on-reservation systems for the distribution of said water.

#### SECTION 7

##### Alternative Water Supplies

7.1. In any year when the Secretary is unable to deliver from the main project works of the Central Arizona Project any portion of the full amount of water specified in subsection 5.1, he shall acquire and deliver an equivalent amount of water from the following sources or any combination thereof--

- (A) agricultural water from the Central Arizona Project which has been contracted for but has been released or will be unused by the contractor during the period in which the Secretary will acquire the water;
- (B) any water available for delivery through the Central Arizona Project which exists

by reason of the augmentation of the water supply available for use and distribution through the Central Arizona Project by subsequent act of Congress; and

(C) water from any of the following sources or any combination thereof within the Tucson Active Management Area and that part of the Upper Santa Cruz Basin not within that area in the State of Arizona:

(i) private lands or interests therein having rights in surface or ground water recognized under State law, provided that deliveries of water from said lands or interests therein shall be made only to the extent such water may be transported within the Tucson Active Management Area pursuant to State law; or

(ii) reclaimed water to which the seller has a specific right.

7.2. As an alternative to, and in satisfaction of his obligation to deliver the quantities of water provided for in subsection 6.1, the Secretary may acquire and deliver an equivalent quantity of water from the following sources or any combination thereof pursuant to agreements authorized in section 307(b) of the Act--

- (A) agricultural water from the Central Arizona Project which has been contracted for but has been released or will be unused by the contractor during the period in which the Secretary will acquire the water;
- (B) any water available for delivery through the Central Arizona Project which exists by reason of the augmentation of the water supply available for use and distribution through the Central Arizona Project by subsequent act of Congress; and
- (C) water from any of the following sources or any combination thereof within the Tucson Active Management Area and that part of the Upper Santa Cruz Basin not within that area in the State of Arizona:
  - (i) private lands or interests therein having rights in surface or ground water recognized under State law, provided that deliveries of water from said lands or interests therein shall be made only to the extent such water may be transported within the Tucson Active Management Area pursuant to State law; or

- (ii) reclaimed water to which the seller has a specified right.

SECTION 8

On Reservation Ground Water Rights.

8.1. Pursuant to the Act and consistent with section 3 of this contract:

- (A) the Tribe shall have the right to withdraw ground water from beneath the San Xavier Reservation up to a limit of ten thousand (10,000) acre-feet per year;
- (B) the Tribe shall have the right in each year to withdraw ground water from beneath the eastern Schuk Toak District of the Sells Papago Reservation which lies within the Tucson Active Management Area in an amount equivalent to the quantity pumped therefrom in the year immediately preceeding January 1, 1981;
- (C) in addition to the quantity of ground water which the Tribe has the right to withdraw in each year pursuant to subsections 8.1(A) and 8.1(B), the Tribe shall have the right to drill wells and withdraw ground water if such wells have a capacity of less than thirty-five (35) gallons per

minute and are used only for domestic and livestock purposes.

8.2. Nothing contained in this contract or the Act shall be construed to establish whether or not the federal reserved rights doctrine applies to ground water.

#### SECTION 9

##### Use or Disposition of Water

9. The Tribe shall have the right to devote all water supplied under this contract, whether delivered by the Secretary or pumped by the Tribe, to any use, including but not limited to agricultural, municipal, industrial, commercial, mining, or recreational use, whether within or without the Papago Reservation, so long as such use is within the Tucson Active Management Area and that part of the Upper Santa Cruz Basin not within such area. The Tribe may sell, exchange, or temporarily dispose of such water, but the Tribe may not permanently alienate any water right. In the event the Tribe sells, exchanges or temporarily disposes of water, such sale, exchange or temporary disposition shall be pursuant to a contract which has been accepted and ratified by a resolution of the Papago Tribal Council and approved and executed by the Secretary as agent and Trustee for the Tribe. Such contract shall specifically provide that an action may be maintained by the contracting party against the United States and the Secretary for the breach thereof. The net proceeds

from any sale, exchange, or disposition of water by the Tribe shall be used for social or economic programs or for Tribal administrative purposes which benefit the Papago Tribe.

SECTION 10

Water Delivery Schedule

10.1. The Secretary shall make deliveries of the quantities of water specified in sections 5 and 6 of this contract to meet the Tribe's water delivery requirements and shall construct any necessary facilities, such as those for storage or reregulation, to enable the Secretary to meet said delivery requirements.

As soon as possible but not later than October 12, 1992, the Secretary shall notify the Tribe of the substantial completion of a delivery system for the delivery of the quantities of water specified in sections 5 and 6 of this contract and the date for availability of said water to the Tribe. If said notice of availability of water is given by the Secretary prior to July 1st of any year, the first schedule for the balance of that current year shall be submitted to the Secretary within 30 days. If said notice is given after July 1st of any year, the first schedule shall be submitted to the Secretary for the balance of the then current year and the next succeeding full year. Thereafter, the amounts, times, and rates of delivery of said water to the Tribe during any year shall be in accordance with a water delivery

schedule for that year, such schedule to be determined in the following manner--.

- (A) on or before October 1 of each year, the Tribe shall submit in writing to the Secretary a water delivery schedule indicating the amounts of water needed by the Tribe during each month of the following year along with a preliminary schedule of water needed for the succeeding two years;
- (B) upon receipt of a schedule, the Secretary shall review it and, after consultation with the Tribe, shall make only such modifications in it as are necessary to insure that deliveries will be consistent with sections 5 and 6 of this contract. If the Secretary is unable to deliver the quantities of water specified in sections 5 and 6, he shall determine and report to the Tribe on or before December 1 of each year the amount of water that he will be unable to deliver and the amount and source of water that he will be able to deliver;
- (C) a water delivery schedule may be amended by the Secretary upon written request by

the Tribe. Proposed amendments shall be subject to review and modification by the Secretary shall be submitted to the Secretary within a reasonable time before the needed change is to become effective, and in like manner as the schedule itself.

10.2. To meet his obligations of delivering the quantities of water specified in sections 5 and 6 of this contract, the Secretary shall deliver such water to the southern boundary of the San Xavier Reservation (or to such other point(s) north of said boundary as may be agreed upon in writing by the Tribe and the Secretary) and to the boundary of the Schuk Toak District of the Sells Papago Reservation at point(s) agreed upon in writing by the Tribe and the Secretary and which are suitable for delivery to the Reservation distribution system.

10.3. All water delivered to the Tribe shall be measured with equipment furnished and installed by the Secretary and operated and maintained by the Secretary. Upon written request by the Tribe, the accuracy of such measurement shall be investigated by an independent qualified engineer to be agreed upon by the Secretary and the Tribe and any errors appearing therein shall be adjusted.

10.4. In no event shall the Secretary be required to deliver to the Tribe in any one month a total amount of

water greater than 20 percent of the Tribe's annual entitlement under sections 5 and 6 of this contract and sections 304 and 305 of the Act; provided, that the Secretary may deliver a greater percentage in any month if such increased delivery is compatible with the overall water delivery obligations of the Secretary as determined by him and if the Tribe agrees to accept such increased deliveries.

10.5. All water delivered to the Tribe pursuant to sections 5 and 6 of this contract and sections 304 and 305 of the Act shall be delivered pursuant to the terms and conditions of this contract and those provisions of the December 11, 1980, agreement which are not inconsistent with this contract.

#### SECTION 11

##### Ground Water Management Plan

11. As provided by the Act, the Secretary shall establish a ground water management plan for the San Xavier Reservation and that part of the eastern Schuk Toak District of the Sells Papago Reservation which lies within the Tucson Active Management Area. Except as is necessary to be consistent with the provisions of the Act, the plan will have the same effect as any management plan developed under Arizona law. The Secretary will consult with the Tribe and provide for timely review and comment by the Tribe prior to establishing any water management plan pursuant to the act and this

contract. The Tribe agrees to comply with the water management plan established by the Secretary.

SECTION 12

Trust Fund

12.1. As required by the Act, the Secretary of the Treasury shall, pursuant to appropriations, pay to the Papago Tribal Council which is the authorized governing body of the Papago Tribe, the sum of fifteen million (\$15,000,000) dollars for deposit in the Papago Trust Fund established by said governing body pursuant to the Act, which fund shall be held in trust for the benefit of the Tribe and invested in interest bearing deposits and securities, including deposits and securities of the United States.

12.2. The Papago Tribal Council, as Trustee for the Tribe, may only spend each year the interest and dividends accruing on the sum held and invested as set forth hereinabove. Such amount may only be used by the Tribe for the subjugation of land, development of water resources, and the construction, operation, maintenance, and replacement of related facilities on the Papago Reservation which are not the obligation of the United States under the Act or any other Act of Congress.

SECTION 13

Water Resources Study

13. In order to encourage the Tribe to develop sources of water on the Sells Papago Reservation, the Secretary

shall, when so requested by the Tribe, carry out a study to determine the availability and suitability of water resources within the Sells Papago Reservation but outside the Tucson Active Management Area and that part of the Upper Santa Cruz Basin not within that area.

SECTION 14

Energy Study

14. The Secretary shall, in cooperation with the Secretary of Energy, or, with the appropriate agency or officials, carry out a study to determine the availability of energy and the energy requirements which result from the enactment of the Act and from the Secretary's obligations under this contract, and the feasibility of constructing a solar power plant or other alternative energy producing facilities to meet such requirements.

SECTION 15

Cooperative Fund

15.1. Section 313 of the Act establishes in the Treasury of the United States a Fund, known as the "Cooperative Fund", under the custody of the Secretary of the Treasury to provide the Secretary of the Interior with a ready source of funds--

(A) to pay the continuing operation, maintenance and replacement costs related to the delivery of water as provided by sections

5 and 6 of this contract and sections 303, 304, and 305 of the Act;

- (B) to acquire and deliver alternative water supplies as provided by section 7 of this contract and sections 304(b) and 305(c) of the Act; and
- (C) to make payments for damages as provided in section 4 of this contract and sections 304(c) and 305(d) of the Act in the event the Secretary of the Interior is unable to acquire and deliver quantities of water adequate to fulfill his obligations under this contract and the Act.

15.2. Section 313(c) of the Act protects the corpus of the Fund and provides for the accrual of interest for a period of time equal to the earlier of October 12, 1992, or the time required to complete the main project works of the Central Arizona Project. Interest accruing to the Fund and available to the Secretary of the Interior under section 313 of the Act shall be used in the following order of priority--

- (A) to pay the continuing operation, maintenance and replacement costs related to the delivery of water as required in sections 5 and 6. Approximately one year prior to the authorized completion of the main

project works, but no later than October 12, 1991, and annually thereafter, the Secretary of the Interior shall make a projection of interest estimated to accrue to the Fund and shall review the projected operation, maintenance and replacement costs related to future deliveries of water and, if he determines that insufficient interest will accrue to the Fund in order to pay such costs, he may, as authorized by section 313(b)(3)(B) of the Act, by notice to Congress, request that additional funds be appropriated to the Fund to meet his obligations to pay such costs;

(B) to pay the costs described in subsection 15.2(A) and subject to the availability of additional funds, to pay costs related to the acquisition and delivery of alternative sources of water as provided by section 7 of this contract and sections 304(b) and 305(c) of the Act. If, pursuant to the annual projections described in subsection 15.2(A), the Secretary of the Interior determines that insufficient

interest will accrue to the Fund to pay the costs related to the acquisition and delivery of alternative sources of water, he may, as authorized by sections 313(b)(3)(B) and (C) of the Act, by notice to Congress, request that additional funds be appropriated to the fund to meet his obligations to pay such costs;

- (C) to pay the costs described in subsections 15.2(A) and 15.2(B), and subject to the availability of additional funds, to make payments for damages as provided in section 4 of this contract and sections 304(c) and 305(d) of the Act in the event the Secretary of the Interior is unable to acquire and deliver quantities of water adequate to fulfill his obligations under the Act and this contract. If, pursuant to the annual projections described in subsection 15.2(A), the Secretary of the Interior determines that insufficient interest will accrue to the Fund to pay damages provided in section 4, he may, as authorized by sections 313(b)(3)(B) and (C) of the Act, request that additional funds

be appropriated to the Fund in order to pay such damages. In the event interest accruing to the Cooperative Fund is insufficient in any given year to pay such damages, the Tribe may seek an award of damages in excess of payments actually made by the Secretary of the Interior in the United States Claims Court under Section 1505 of Title 28, U.S.C., provided that any funds appropriated by Congress to pay damages after a suit has been instituted by the Tribe shall be an offset against the award.

#### SECTION 16

##### Study and Exchange of Land - Gila Bend Reservation

16.1. As required by the Act, the Secretary shall carry out such studies and analysis as he deems necessary to determine which lands, if any, within the Gila Bend Reservation have been rendered unsuitable for agriculture by reason of the operation of Painted Rock Dam. Such studies and analysis shall be completed on or before October 12, 1983.

16.2. If the Secretary determines, on the basis of this study and analysis, that lands have been rendered unsuitable for agriculture by reason of the operation of the Painted Rock Dam, the Secretary shall, if the Tribe consents, exchange

such lands for an equivalent acreage of land under his jurisdiction which are within the Federal public domain and which, but for their suitability for agriculture, are of like quality. Any land exchanged shall be held in trust for the Papago Tribe and shall be part of the Gila Bend Reservation for all purposes. Such lands shall be deemed to have been reserved as of the date of reservation of the lands for which they are exchanged.

16.3. The Secretary may require the Tribe to reimburse the United States for moneys paid, if any, by the Federal Government for flood easements on lands which the Secretary replaces by exchange.

#### SECTION 17

##### Arid Land Renewable Reserve Assistance

17. The Act provides that if a Federal entity is established to provide financial assistance to undertake arid land renewable resources projects and to encourage and assure investment in the development of domestic sources of arid land renewable resources, such entity shall give first priority to the needs of the Papago Tribe in providing such assistance. Such entity shall make available to the Tribe price guarantees, loan guarantees, or purchase agreements, loans and joint venture projects at a level adequately to cultivate a minimum number of acres as determined by such entity to be necessary to the economically successful

cultivation of arid land crops and a level to contribute significantly to the economy of the Tribe.

SECTION 18

Indian Self - Determination Act

18. As provided by the Act, the functions of the Bureau of Reclamation under the Act and this Contract shall be subject to the provisions of the Indian Self-Determination and Education Assistance Act (88 Stat. 2203; 25 U.S.C. 450) to the same extent as if performed by the Bureau of Indian Affairs. The functions of the Bureau of Reclamation referred to in this section which are subject to P.L. 93-638 are limited to any and all projects of the Bureau of Reclamation under the Act which are not a part of the main project works of Phase B of the Tucson aqueduct of the Central Arizona Project but which involve improvement of existing systems or design and construction of distribution systems within the San Xavier Reservation and the eastern Schuk Toak District of the Sells Papago Reservation.

SECTION 19

Force Majeure

19. In the event of the Secretary being rendered unable, wholly or in part, by force majeure to carry out his obligations under this contract or to make payments of the amount due hereunder, the obligations hereunder of the Secretary so far as they are affected by such force majeure

shall be suspended during the continuance of any inability so caused, but for no longer period, and such cause shall so far as possible be remedied with all reasonable dispatch. The term "force majeure" as employed in this contract shall mean Acts of God, strikes, lock-outs, or other industrial disturbances, acts of public enemies, wars, blockades, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, storms, flood washouts, arrests and restraint from rulers and people, interruptions by government not due to defaults of the parties, civil disturbances, explosions, breakage or accident to machinery or transmission facilities. Nothing herein contained shall be construed as requiring the Secretary or the Tribe to settle a strike against its will.

SECTION 20

Appropriations

20. This contract is subject to compliance with the Budget Act pursuant to section 314 of the Act.

SECTION 21

Federal Procurement Laws and Regulations

21. Federal procurement laws and regulations shall apply to any contract, subcontract, grant, or subgrant made to implement this contract.

SECTION 22

Inspection of Books and Records

22. Subject to applicable federal laws and regulations, the Secretary and the Tribe shall have the right

during office hours to examine and make copies of each other's books and records relating to matters covered by this Contract.

SECTION 23

Correspondence

23. All notices, demands or correspondence between the parties concerning this contract shall be sent to the addresses set forth in this paragraph or to such addresses as the parties may hereafter designate in writing. Notices and demands shall be sent by certified or registered mail. Receipt of any notice or demand shall be deemed complete 10 days after mailing or upon the date actually received, whichever is earlier. The addresses are as follow:

Chairman, Papago Tribe  
P.O. Box 837  
Sells, Arizona 85634

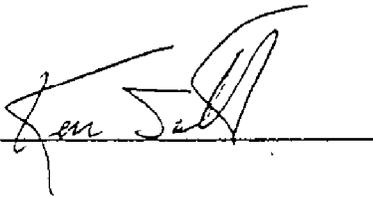
Regional Director  
Lower Colorado Region  
U.S. Bureau of Reclamation  
P.O. Box 427  
Boulder City, Nevada 89005

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed as of the day and date first above written by their respective officers and representatives and warrant that each is duly authorized by the respective entity to execute this agreement which shall bind all the parties hereto, their successors and assigns.

THE UNITED STATES OF AMERICA

THE PAPAGO TRIBE OF ARIZONA

BY



BY

