MEMORANDUM OF AGREEMENT
AMONG
THE INDIAN HEALTH SERVICE
AND
THE HOPI TRIBE
HOPI INDIAN RESERVATION

PROJECT NO. PH 14-U62
PUBLIC LAW 86-121

U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES
PUBLIC HEALTH SERVICE
INDIAN HEALTH SERVICE
PHOENIX AREA OFFICE

JUNE 2014

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THIS AGREEMENT is made among the Indian Health Service, Department of Health and Human Services, hereinafter referred to as IHS, acting through the Director, Phoenix Area Indian Health Service, under and pursuant to the provisions of Public Law 86-121 (73 Stat. 267), the Hopi Tribe, Hopi Indian Reservation, Navajo and Coconino Counties, Arizona, hereinafter called the Tribe, acting through the Chairman..

WHEREAS, the Tribe and Village desires to obtain water facilities for Tribal members on the Reservation, Navajo and Coconino Counties, Arizona, and

WHEREAS, the Tribe has requested IHS assistance in the provision of sanitation facilities outlined in the Project Summary by letter dated November 2010, and

WHEREAS, the IHS desires to assist in the provision of sanitation facilities under Public Law 86-121 for the Tribe, and

WHEREAS, the Tribe has obtained an Environmental Protection Drinking Water Tribal Set-Aside grant for the provision of sanitation facilities described in the attached Project Summary, and

WHEREAS, the Tribe and has reviewed the attached Project Summary and concurs with its provisions.

NOW THEREFORE, in order to carry out the project as set forth in the attached Project Summary titled Hopi Arsenic Mitigation Project, Tribal Contribution, Hopi Indian Reservation, and dated June 2014, the parties mutually agree that:

TRIBAL LANDS

1. The IHS recognizes the special relationship between the Hopi Tribe, Hopi Villages and Hopi Clans on matters of local land use. Further, while IHS recognizes the Hopi Tribe as the focal point in the government to government relationship between the United States

and the Tribe for agreements such as this, IHS respects the Villages and realizes that Village and/or Clan approval is necessary prior to entering upon certain Hopi lands.

2. The Tribe and Village hereby grant permission for the IHS and its representatives to enter upon or across tribal lands under the control of the Tribe without charge. Said permission to be on these lands is granted for the sole purpose of carrying out the project outlined in the attached Project Summary and provided for herein. IHS and its representatives shall provide advance notice to the Tribe and/or Village representatives when and where they will be present on Tribal/Village lands. The Tribe agrees to waive all claims against IHS, which may arise by reason of such entry upon tribal lands, except those that may be pursuant to or arise under the Federal Tort Claims Act. This waiver shall not extend to claims against third parties or agents or employees of IHS who act beyond the authority of their employment. Construction under this agreement within the land holdings of the Village will be located in areas acceptable to the Village.

3. The Tribe shall obtain all rights-of-way and easements on or over tribal lands which may be necessary for the provision and operation of any facilities provided for in this Agreement. The Tribe and Village, as appropriate, will allow use of the land to the extent determined necessary to carry out the obligations of the IHS under this agreement.

4. The IHS will conduct a Cultural Resources Survey prior to any construction under this agreement to minimize disturbance of Traditional and Cultural properties. IHS shall consult with the Tribe and Village prior to any excavations that may result in inadvertent discovery of human remains in accordance with the Native American Graves Protection and Repatriation Act and related Regulations, 43 CFR Part 10. In the event that previously unidentified archeological features and/or concentrations of artifacts are encountered in the project areas during any phase of development or construction, all excavation and construction shall cease within a 100-foot radius of the discovery. The Hopi Tribal Cultural Preservation Office and Village shall be consulted and mutually agree on procedures which will be followed to mitigate or avoid damage to the site, if necessary. This Agreement shall serve as official notice to the Tribe and Village that the proposed sanitation facilities construction may result in inadvertent discoveries, and that any such discoveries shall be subject to the above Regulations, including consultation between the IHS, Village, and the Tribally designated cultural resources representative regarding the disposition of human remains or related cultural items. In addition, as part of IHS' normal project procedures, IHS will comply with NEPA and other applicable environmental regulatory requirements prior to construction. If the Tribe is administering construction of the sanitation facilities through a Tribal contract, the Tribe shall assume full responsibility for compliance with 43 CFR Part 10.

TRIBAL CONTRIBUTIONS

5. The Tribe shall have primary responsibility to contribute any funds necessary to construct the facilities as planned and designed if costs accrued for the project are not within the scope of approved work or are beyond the EPA's cost ceiling of $985,000 as described in Paragraph 8 below. The Tribe shall provide necessary administrative services and

support to complete the design and construction phases.

EPA CONTRIBUTIONS

6. The EPA shall designate a representative to coordinate its participation in the project. The EPA shall provide to the Tribe and IHS technical assistance as needed to help them meet applicable requirements to successfully conduct each phase of the project.

7. The EPA funds shall be used by IHS to reimburse the Tribe for authorized eligible expenses incurred during each phase of the project. IHS, after consultation with the Tribe shall establish by letter a budget for this type of reimbursement within thirty (30) days of execution of this agreement.

8. EPA shall transfer to the IHS, through an Interagency Agreement, funds for the eligible work as described in the Project Summary. The EPA shall contribute to the IHS an amount totaling $985,000 for design and construction of the proposed facilities.

9. That if the actual costs of design and construction are less than the total amount of $985,000, then the difference will be returned to EPA. If, on the other hand, at any point while designing and constructing the project, the projection for the cost of the proposed project exceeds $985,000, then IHS will notify EPA and the Tribe. No further obligations shall be undertaken by IHS beyond the amount of funds available. Cost increases may result in either a reduction to the eligible scope of the project or the provision of funding by the Tribe to complete the project.

IHS CONTRIBUTIONS

10. The IHS will provide without charge to the Tribe:
    a. All materials, supplies, equipment, and labor for the design of the facilities outlined in the attached Project Summary;
    b. Technical assistance for contract administration, construction inspection, supply and materials purchase, construction staking, and preparation of plans and specifications;
    c. All materials, supplies, equipment, and labor for the installation of the facilities outlined in the attached Project Summary identified as being provided for by IHS, and;
    d. Instruction as to the proper utilization, maintenance, operation, and protection of the facilities provided for herein.

11. The IHS shall make contributions to the Tribe in amounts not exceeding total approved costs for construction of facilities as outlined below in paragraphs 13 & 14. Contributions shall include funds for administration and construction of the proposed facilities. The exact amount to be contributed shall be the sum of the following items:

    [SEQ 2_1 * alphabetic \r 1]. Actual cost of approved construction contracts;

    [SEQ 2_1 * alphabetic \n]. Contract administrative support fee to be paid to the Tribe in

lieu of indirect costs. This fee is to cover a portion of the cost of administering construction contracts under the project. The contract administrative support fee shall be as follows:

Contract Amount	Administrative Fee
$0 to $25,000	Four percent of the contract amount.
$25,000 to $200,000	$1,000 plus three percent of the contract amount in excess of $25,000.
Above $200,000	$6,250 plus two percent of the contract amount in excess of $200,000.

c. Direct costs such as printing, copying, advertising, and accounting fees may be paid if approved in advance by the IHS District Engineer, Division of Sanitation Facilities Construction.

12. The IHS contributions to the Tribe shall be made on a quarterly basis in amounts recommended by the IHS District Engineer based on cost estimates for construction projected during the upcoming quarter. Supplemental requests for contributions may be made should costs exceed the quarterly estimate. Any funds contributed and not expended within a given quarter shall be applied toward the next quarterly estimate and the contribution adjusted accordingly.

13. The IHS will release contributions to the Tribe as provided for in Paragraphs 10 & 11 of this Agreement, upon:
    a. Execution of this Agreement by all parties;
    b. Receipt of a written request from the Tribe for the required funds;
    c. Certification from the IHS District Engineer that the amount of funds requested is required to make timely payments in accordance with the project budget for the supplies, materials, equipment, and services being obtained under the provisions of this Agreement; and
    d. Approval by the IHS Director, Division of Sanitation Facilities Construction.

14. The IHS shall utilize project funds in the amount of $119,691 for project technical support expenses. Project technical support expenses shall include IHS expenditures such as technician and clerical salaries, GSA vehicles and miscellaneous project related expenses. IHS shall also use project funds in the amount of $47,876 for Engineering Program Support expenses. Engineering Program Support expenses include salaries, training, travel, vehicles, equipment, etc., for professional staff.

REPRESENTATIVES

15. The Tribe will provide one or more representatives to coordinate the conduct of tribal and village participation under this Agreement. The Tribal representative shall, at a minimum, obtain consent of each participating Indian family on forms furnished by the

IHS; obtain cooperation of Village members in the fulfillment of labor responsibilities assumed by the Tribe and Village under this Agreement; and attend the final inspection. All correspondence related to the project shall be provided to the Tribal Chairman.

16. The IHS Project Engineer shall manage the project and coordinate IHS participation in the Project.

TRANSFER OF TRIBALLY PROVIDED FACILITIES

17. All parties understand that the facilities constructed (including equipment, land, and supplies purchased) through Tribal Procurement under this Agreement with IHS contributed funds are at no time the property of the IHS, but rather belong to the Tribe, which shall operate and maintain such facilities properly, until or unless transferred to other parties.

18. Because the IHS will not at any time own the facilities constructed, no formal transfer agreement is necessary. In lieu of a transfer agreement, the IHS will notify the Tribe by registered mail when IHS participation in the project is complete.

19. The Tribe shall transfer on-site water and waste facilities to individual homeowners. Upon completion of construction, the homeowners will become responsible for operation and maintenance of their facilities. Facilities constructed under this Agreement at all times belong to the Tribe until transferred to individual homeowners or other parties.

OPERATION AND MAINTENANCE FEES AND ORDINANCES

20. The Tribe will establish connection fees and user rates and collect such charges from individuals served by the system to obtain the revenue necessary to sustain the operation, maintenance, and repair of the community water supply and sewerage systems. As an alternative, the Tribe may provide this revenue from another source.

21. The Tribe agrees to enact and enforce appropriate ordinances or regulations governing:
    [SEQ 2_1 * alphabetic \r 1]. Connection to the community water supply and sewage systems by the residents of the community;
    [SEQ 2_1 * alphabetic \n]. The methods and materials to be used in making connections to the community water supply and sewage systems in a safe and sanitary manner; and
    [SEQ 2_1 * alphabetic \n]. The continued operation, maintenance, and repair of individual water supply and waste disposal facilities in a safe and sanitary condition by the persons served thereby.

PROJECT SCHEDULE

22. In the interest of coordination, understanding, and economy, before construction of the project begins, the IHS Project Engineer in consultation with the Tribe and Village shall prepare a project schedule for the planning, design, construction and training activities as

outlined in the Project Summary. The project engineer shall submit the schedule to the Tribe and Village during the planning phase of the project. Thereafter, the project engineer shall provide changes made to the schedule to the Tribe and Village for review and comment.

23. Installation of the water supply and waste disposal facilities provided for herein shall be completed as soon as is practicable in accordance with the schedule developed by the IHS project engineer. The Tribe, Village and IHS will work in partnership to resolve delays that affect the start of construction.

24. In the event that actual construction of this project cannot be initiated for any reason by June 30, 2016, the IHS reserves the right to cancel the project and use the designated project funds for other projects. If the condition which impeded construction is resolved following such cancellation, the IHS will give high priority to funding the project from appropriated sanitation facilities funds available at the time or from future appropriations for sanitation facilities.

TRIBAL FINANCIAL MANAGEMENT STANDARDS AND PROCEDURES

25. The Tribe shall provide the following features in its financial management system:
    a. The Tribe shall maintain original accounting records that accurately identify the source and application of all project funds it receives. The source documentation shall include canceled checks, paid bills, payrolls, time and attendance records, purchasing documents, and financial records. Accurate, current, and complete project records shall be reported in accordance with other provisions of this Agreement.
    b. The Tribe shall maintain effective controls and accountability for all cash, real and personal property, and other assets acquired;
    c. The Tribe shall compare actual tribal expenditures with budgeted amounts for the project; and
    d. Applicable OMB cost principles (OMB Circular A-87) and the terms of this Agreement shall govern in determining the reasonableness, allowability, and allocability of all costs under the project.

26. The Tribe shall maintain a separate financial account for the project.

27. The Tribe shall submit a projected cash flow schedule. The Tribe and IHS shall minimize the time elapsed between fund transfer and disbursement.

28. Interest in excess of $100 per year earned on cash advances (Federal funds) must be returned to the IHS in the appropriate project account.

29. Funds for construction projects under an Agreement shall not be borrowed or intentionally invested. Funds from one IHS funded construction project shall not be used for cash flow or other unauthorized purposes or for another IHS funded construction project.

30. Any proposed changes by the Tribe in the project Summary and/or budgeted costs must be reviewed and approved by IHS as provided for in the Agreement.

TRIBAL PROCUREMENT PROVISIONS

31. The facilities described in the Project Summary shall be designed and constructed in accordance with normal IHS standards for such facilities.

32. The Tribe, through its procurement system, shall provide for construction of all water and sewage facilities described in the Project Summary as being provided by the Tribe and shall procure the facilities in accordance with this Agreement and in compliance with applicable Federal requirements.

33. The Tribe shall submit to the IHS, for review and approval before advertising, all proposed solicitations and shall make such adjustments in the solicitations as determined necessary by IHS.

34. The Tribe shall develop and submit to IHS for approval a proposed construction contract showing proposed unit costs, based on bids received, for construction of sanitation facilities to be installed. The Tribe shall negotiate these unit costs if necessary to receive approval from IHS. These unit costs shall govern for the duration of the Tribal contract under which they are proposed. No work shall be performed prior to written approval by IHS of the corresponding unit costs.

35. If additional or special units of work are needed during execution of the project, the Tribe shall submit a list of proposed costs for negotiation on those items. Costs for the additional or special items shall then govern either for the duration of the Tribal contract, or for just those sites specified in the proposal, as agreed at the time. Major modifications to the construction contract, such as adding facilities not included in the Project Summary or requiring additional project funds, shall not be executed without written approval by the IHS Director, Division of Sanitation Facilities Construction, Phoenix Area.

36. The IHS shall review and approve proposed unit costs for all items of work under the project. Once approved by IHS, these unit costs shall govern all work for the duration of the Tribal contract under which they are proposed. All unit costs are subject to approval by the Director, Division of Sanitation Facilities Construction prior to the award of any contract or the start of any construction involving those items of work.

37. The Tribe shall procure construction of facilities outlined in the Project Summary using a system of contract administration that ensures performance by its contractors in accordance with the terms and conditions of the contract and compliance with the latest edition of the IHS MOA Guideline Chapter 6, Section 2. Some, but not all, of the requirements are:
    a. Procurement Standards;
    b. Competitive Procurement Practice;
    c. Indian Preference;

d. Davis-Bacon Wage Rate Application;
e. Bonding Requirements;
f. Subcontract Limits; and
g. Specific Contract Provisions.

38. Tribal procurement documents shall provide for the right of the IHS to inspect sanitation facilities installed to insure they meet minimum IHS standards. The procurement documents shall also note that the IHS inspector does not have authority to modify the contract or issue direction to the contractor. In addition, the contract documents shall require the contractor to comply with OSHA safety requirements for all construction activity.

39. The IHS will, at the request of the Tribe, provide oversight and technical assistance on the contractor submittals, progress payments, change order requests, bid evaluation, contractor qualification review, dispute and claim resolution, and other project related information submitted by the tribal contractor and make recommendations to the Tribe.

40. The IHS shall provide construction inspection services to the Tribe. The IHS inspector shall not have the authority to modify the contract or direct the contractor. The IHS and Tribe will inspect all sanitation facilities constructed through Tribal procurement to insure construction meets minimum IHS standards. Following construction inspection, the IHS will advise the Tribe on whether the construction meets the IHS interpretation of the contract requirements.

41. At no time during the project will the Tribe represent the IHS nor will the IHS represent the Tribe in contract administration matters. The Tribe shall be responsible, applying good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurement. These issues include, but are not limited to source evaluation, protests, disputes, and claims.

42. IHS inspection of work is to ensure that the work performed complies with all the terms and conditions of the Tribal contract. Acceptance and final IHS contribution for the work performed will not be made to the Tribe until such time as the IHS participates in a final inspection and determines that all work complies with all contract requirements.

43. The Tribe shall conduct a final inspection of the facilities provided under each contract with the contractor, IHS representatives, and other interested parties. Final payment for the work by the Tribe shall not occur until the contractor has corrected all deficiencies identified at the final inspection and until the work is in full compliance with the plans, specifications and other contract requirements.

FINAL INSPECTION and PROJECT CLOSEOUT

44. The IHS and Tribal representatives, and other interested parties, shall conduct a final inspection of the facilities provided under the project. A review of the project scope shall be made to confirm completion of the project, including As-Built drawings, and O&M

manuals, as applicable. IHS will close out the project when it determines that all applicable administrative actions and all required project work have been completed. The Tribe shall return unexpended project funds contributed by IHS within 90 days after the completion of the project construction phase and shall submit a closeout financial report after completion of the project.

45. Except as otherwise provided, project records shall be retained for three (3) years from the project completion date. These records include all financial records, supporting documents, procurement documents, titles, and equipment records; including, but not limited to, time sheets, canceled checks, invoices, purchase orders, and contracts. These records shall be made available to the IHS, Inspectors General, or other designated representatives upon request. The Tribe shall be subject to audit in accordance with the requirements of the Single Audit Act.

46. If any litigation, claim, negotiation, audit, or other action involving the records has been started before the expiration of the three year period, the records shall be retained until completion of the action and resolution of all issues which arise from it, or until the end of the three year period, whichever is later.

WARRANTIES

47. The Tribe, to the extent economically feasible, will obtain a one-year warranty for the Tribe and heads of household from the Tribal contractors, suppliers, and manufacturers on equipment, work, and supplies provided by them. The IHS shall assist the Tribe or heads of household in obtaining the benefits and protection of all warranties on equipment or work provided under this Agreement. In the event of a problem occurring within the first year of installation with the design or construction of installed facilities, equipment, or work not protected by the warranties of the suppliers or manufacturers, the IHS will correct the problem, subject to the availability of funds and staff resources, as determined by the IHS.

AGREEMENT DISPUTES

48. All disputes regarding the provisions of this agreement will be resolved among the parties through the IHS Area's established administrative procedures first. If a dispute cannot be resolved locally, the parties agree that the next administrative procedure is an appeals board established at the IHS headquarters level, which will make a recommendation to the IHS Director, who will exercise final authority for the IHS in the administrative review of all disputes.

49. Nothing in this Agreement shall be construed as a waiver of the sovereign immunity of either the US Government, the Hopi Tribe, or the Village for any purpose.

AGREEMENT TERMINATION

50. Any party to this Agreement may terminate its relationship with the other Agreement parties prior to project completion upon 30 days notice in writing to all other parties.

IN WITNESS WHEREOF, the parties have subscribed their names:

FOR THE TRIBE:

_____	_____
Date	Chairman, having been duly authorized to enter into this Agreement on behalf of the Hopi Tribe, as evidenced by the attached copy of the resolution made by the Hopi Tribal Council.

FOR THE INDIAN HEALTH SERVICE:

_____	_____
Date	Area Director Phoenix Area Indian Health Service Department of Health and Human Services