AGREEMENT
FOR
CONSULTING AND OTHER SERVICES

THIS AGREEMENT, entered into this 8th day of August 2013, by and between Yavapai County, The Yavapai-Prescott Indian Tribe, the City of Prescott, the Town of Prescott Valley, and the Town of Chino Valley, under the Intergovernmental Agreement forming the Upper Verde River Watershed Protection Coalition, (hereinafter the "PROTECTION COALITION"), and Burgess & Niple, Inc., an Ohio corporation (hereinafter the "CONSULTANT");

WITNESSETH:

WHEREAS, the PROTECTION COALITION has, through an Intergovernmental Agreement recorded on May 23, 2007, with the Yavapai County Recorder #B-4509 P-87, responsibility to protect the flows of the Upper Verde River Watershed by developing and employing Best Management Practices.

WHEREAS, the PROTECTION COALITION has found the CONSULTANT to be competent and capable of providing consulting services for such projects;

NOW, THEREFORE, for and in consideration of the mutual covenants and promises herein, the parties hereto agree as follows:

ARTICLE 1. DESCRIPTION OF SERVICES. The CONSULTANT shall perform all of the tasks identified in the Scope of Services document attached hereto as Exhibit "A" and expressly made a part hereof (hereinafter "Services") as well as such other tasks as the parties may hereafter mutually agree upon in writing, as necessary for the management of Protection Coalition programs and research, development, design and implementation of projects identified by the Protection Coalition.

Nothing herein shall preclude the PROTECTION COALITION from using its own staff to carry out aspects of the Services, separately or in cooperation with the CONSULTANT, as mutually determined from time to time by the parties. Furthermore, nothing herein shall preclude the parties from entering into additional mutual agreements which add to the Services to be performed by the CONSULTANT (hereinafter "Amendments"). Any such Amendments shall be in writing, signed by the parties' representatives, attached hereto, and expressly made a part hereof.

The CONSULTANT shall, except as provided otherwise in this Agreement and any Amendment hereto, furnish all supervision, labor and materials, and obtain all licenses and permits required for performance of the Services.

ARTICLE 2. SERVICES SCHEDULE. The CONSULTANT shall perform the Services in substantial conformance with the schedule(s) set forth in Exhibit "A" and any Amendments hereto, unless otherwise agreed to by the PROTECTION COALITION.

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ARTICLE 3. AGREEMENT TERM. Unless otherwise terminated as set forth in Articles 4 and 12 hereinafter, the Term of this Agreement shall be from the date first-above written for a period of one (1) year with two (2) one-year options for a total of three years. If there are remaining tasks to be completed or additional new tasks, this contract may be negotiated as mutually agreed to by both parties for an extension allowing for the identified tasks to be completed.

ARTICLE 4. PAYMENT. The PROTECTION COALITION will pay the CONSULTANT for Services satisfactorily performed in accordance with the cost and fee schedule(s) set forth in Exhibit "A" and any Amendments hereto.

All invoices submitted to the PROTECTION COALITION for Services performed by the CONSULTANT shall refer, by date, to the Agreement under which the Services were performed. Invoices shall contain percent completion of each task detailed in this Agreement and any Amendments hereto. When required by the PROTECTION COALITION, invoices shall contain copies of supporting documents and proof of expenditures. Interest may be added to accounts in arrears at the rate of one and five-tenths percent (1.5%) for each full month of delinquency.

In the event a Notice to Proceed is not issued to the CONSULTANT by the PROTECTION COALITION within sixty (60) days after the date first-above written, this Agreement shall terminate and the PROTECTION COALITION's payment obligation hereunder shall also terminate.

ARTICLE 5. NON-EXCLUSIVE AGREEMENT. Nothing in this Agreement is to be construed as granting to the CONSULTANT an exclusive right to perform any or all of the PROTECTION COALITION's requirements of the type contemplated hereunder.

ARTICLE 6. CHANGES. The PROTECTION COALITION may, at any time by written direction, require additional tasks as part of the Services, direct the omission of, or variation to, the Services, or alter the schedule for Services. If such direction results in a material change in the amount or character of the Services, an equitable adjustment to the price and to any other provisions in Exhibit "A" or any Amendments hereto that may be affected, shall be made in writing. All such material changes must first be approved by the PROTECTION COALITION.

ARTICLE 7. PROFESSIONAL RESPONSIBILITY. The CONSULTANT shall perform the Services hereunder in accordance with the standards of care, skill, and diligence normally provided by a professional in the performance of such Services with respect to services similar to that contemplated hereunder. In the event of the CONSULTANT's failure to observe and adhere to such standards, the CONSULTANT shall, upon notice from authorized PROTECTION COALITION staff, promptly re-perform the Services at the CONSULTANT's sole expense.

ARTICLE 8. INDEMNIFICATION. With respect to professional liability only, to the fullest extent permitted by law, the CONSULTANT shall defend, indemnify and hold harmless the PROTECTION COALITION, its agents, officers, officials and employees for, from and against all claims, damages, losses and expenses (including but not limited to attorney fees, court costs, and the cost of appellate proceedings), relating to, arising out of, or alleged to have resulted from the acts, errors, mistakes, omissions, work or services of the CONSULTANT, its agents, employees or any tier of the CONSULTANT's subcontractors in the performance of this Agreement. The CONSULTANT's duty to defend, hold harmless and indemnify the

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PROTECTION COALITION, its agents, officers, officials and employees shall arise in connection with any claim, damage, loss or expense that is attributable to bodily injury, sickness, disease, death, or injury to, impairment, or destruction of property including loss of use resulting therefrom caused by the CONSULTANT's acts, errors, mistakes, omissions, work or services in the performance of this Agreement including any employee of the CONSULTANT, any tier of the CONSULTANT's subcontractors or any other person for whose acts, errors, mistakes, omissions, work or services the CONSULTANT may be legally liable.

With respect to all liability other than professional liability, including but not limited to those acts or omissions, normally covered by general and automobile liability insurance, to the fullest extent permitted by law, the CONSULTANT shall defend, indemnify and hold harmless the PROTECTION COALITION, its agents, officers, officials and employees for, from, and against all claims, damages, losses and expenses (including but not limited to attorney fees, court costs, and the cost of appellate proceedings), relating to, arising out of, or alleged to have resulted from the acts, errors, mistakes, omissions, work or services of the CONSULTANT, its agents, employees or any tier of the CONSULTANT's subcontractors in the performance of this Agreement. The CONSULTANT's duty to defend, hold harmless and indemnify the PROTECTION COALITION, its agents, officers, officials and employees shall arise in connection with any claim, damage, loss or expense that is attributable to bodily injury, sickness, disease, death, or injury to, impairment, or destruction of property including loss of use resulting therefrom caused IN WHOLE OR IN PART by the CONSULTANT's acts, errors, mistakes, omissions, work or services in the performance of this Agreement including any employee of the CONSULTANT, any tier of the CONSULTANT's subcontractors or any other person for whose services the CONSULTANT may be legally liable including the PROTECTION COALITION. Such indemnity does not extend to the PROTECTION COALITION's sole negligence.

ARTICLE 9. WORKERS' COMPENSATION. The CONSULTANT shall carry Workers' Compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction of the CONSULTANT's employees engaged in the performance of the Services, and Employer's Liability insurance of not less than $100,000 for each accident, $100,000 disease for each employee, and $500,000 disease policy limit.

In case any of the Services are subcontracted, the CONSULTANT will require the Subcontractor to provide Workers' Compensation and Employer's Liability to at least the same extent as required of the CONSULTANT.

ARTICLE 10. INSURANCE. Without limiting any liabilities or other obligations of the CONSULTANT hereunder, the CONSULTANT shall, prior to commencing with Services hereunder, secure and continuously carry with insurers authorized to do business in Arizona the following insurance coverages:

Professional Liability insurance covering acts, errors, mistakes and omissions arising out of the Services performed by the CONSULTANT, or any person employed by the CONSULTANT, with a limit of not less than $1,000,000 each claim.

Commercial/ Business Automobile Liability insurance with a combined single limit for bodily injury and property damage of not less than $1,000,000 each occurrence with respect to any of the CONSULTANT's owned, hired, and non-owned vehicles assigned to or used in performance

of the Services. Coverage will be at least as broad as coverage code 1, "any auto," (Insurance Service Office, Inc. Policy Form CA 00011001, or any replacements thereof). Such insurance shall include coverage for loading and off loading hazards. If hazardous substances, materials or wastes are to be transported, MCS 90 endorsement shall be included and $5,000,000 per accident limits for bodily injury and property damage shall apply.

ARTICLE 11. SUSPENSION OF SERVICES. The PROTECTION COALITION may, by written notice, direct the CONSULTANT to suspend performance of any or all of the Services for a specified period of time. If such suspension is not occasioned by the fault or negligence of the CONSULTANT, this Agreement may be mutually modified to compensate CONSULTANT for extra costs incurred due to the suspension, provided that any claim for adjustment is supported by appropriate cost documentation and asserted within twenty (20) calendar days after the date the PROTECTION COALITION issues an order for resumption of the Services. Upon receipt of notice to suspend Services, the CONSULTANT shall a) discontinue Services, b) place no further orders or subcontracts, c) suspend all orders and subcontracts, d) protect and maintain the Services, and e) otherwise mitigate the PROTECTION COALITION's costs and liabilities for that portion of the Services which have been suspended.

ARTICLE 12. TERMINATION. The PROTECTION COALITION may terminate this Agreement at any time without cause prior to its Term by sending to the CONSULTANT written notice dated fifteen (15) calendar days prior to the termination date. Upon such termination, the PROTECTION COALITION shall pay to the CONSULTANT full compensation for all Services satisfactorily performed by the CONSULTANT as of the termination date, excluding damages or anticipated profits for Services not yet performed.

The CONSULTANT may terminate this Agreement at any time without cause prior to its term by sending to the PROTECTION COALITION written notice dated thirty (30) calendar days prior to the termination date. Upon such termination, the PROTECTION COALITION shall pay to the CONSULTANT full compensation for all Services satisfactorily performed by the CONSULTANT as of the termination date, excluding damages or anticipated profits for Services not yet performed.

ARTICLE 13. EXAMINATION OF SERVICES. All of the Services will be subject to examination at any reasonable time or times by appropriate PROTECTION COALITION staff, who shall also have the right to reject unsatisfactory Services in part or in whole. Neither examination of Services nor the lack of same, nor acceptance of Services by PROTECTION COALITION staff or payment therefore shall relieve the CONSULTANT from any of its obligations under this Agreement.

ARTICLE 14. PROGRESS. The CONSULTANT shall submit monthly written progress reports to assist PROTECTION COALITION staff in determining whether the time requirements in Article 2 hereinabove are being substantially met. Authorized staff may visit the CONSULTANT's office at any reasonable time to determine the status of the Services required by this Agreement. In addition, any person may inspect the public records generated by the CONSULTANT's activities hereunder upon reasonable request, during normal business hours, in accordance with ARS §9-471(B).

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ARTICLE 15. OWNERSHIP OF DESIGNS AND DRAWINGS. All documents (whether printed or stored as electronic, magnetic, or digital information) including, but not limited to, original drawings, estimates, specifications, field notes, and data, are and remain the property of the PROTECTION COALITION, upon payment in full for all Services rendered. The CONSULTANT shall, at the conclusion of the Services or at the conclusion of this Agreement (whichever is earlier), deliver to the PROTECTION COALITION all documents (whether complete or partially complete) produced or collected by the CONSULTANT in its performance under this Agreement. The CONSULTANT shall, at its expense, reproduce and retain a copy of the drawings, estimates, specifications, field notes, or data collected or produced under this Agreement.

ARTICLE 16. NONDISCLOSURE. Except as otherwise required by law or this Agreement, the CONSULTANT, its officers, employees, subcontractors, agents, and assigns shall not divulge to third parties (without the prior consent of the PROTECTION COALITION) any information obtained by it in connection with its performance under this Agreement.

ARTICLE 17. LAWS AND REGULATIONS. The CONSULTANT shall at all times comply with applicable laws, statutes, rules, regulations, and ordinances in its performance under this Agreement, including without limitation those governing wages, hours, employment discrimination, and safety. The CONSULTANT shall also comply with equal opportunity laws and regulations to the extent they are applicable.

ARTICLE 18. PATENT AND COPYRIGHT. The CONSULTANT shall indemnify, and hold harmless the PROTECTION COALITION, its officers, employees, agents and successors, against and from all claims, demands, losses, costs, expenses, suits, settlements, judgments, and damages (including attorneys' fees), of any kind or nature whatsoever on account of infringement of any patent, copyrighted work, secret process, trade secret, unpatented invention, article, or otherwise, including claims thereof pertaining to, or arising from the CONSULTANT's performance under this Agreement.

Should the CONSULTANT's officers, employees, agents, or assigns (or anyone of a like nature), in the performance of the Services or as a result of performing the Services, develop any trade secret, prepare any copyrighted material, make any improvement, originate any invention, develop any process, or otherwise, such trade secret, copyright, improvement, invention, or process shall be the property of the CONSULTANT. However, the CONSULTANT shall grant or cause to be granted to the PROTECTION COALITION the right and/or license to permanently use, or cause to be used for the benefit of the PROTECTION COALITION any such trade secret, copyright, improvement, design, invention, or process in any manner for so long as the PROTECTION COALITION desires to use the same for the PROTECTION COALITION's own internal use.

ARTICLE 19. INDEPENDENT CONTRACTOR. The CONSULTANT shall perform the Services hereunder as an independent contractor, and all persons or entities employed by or under contract with the CONSULTANT in connection herewith shall be employees of the CONSULTANT and are not employees of the PROTECTION COALITION in any respect.

ARTICLE 20. ASSIGNMENT. The CONSULTANT shall not assign this Agreement, or any part hereof, without the prior written consent of the PROTECTION COALITION. Any attempted assignment in violation hereof shall be void.

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ARTICLE 21. SUBCONTRACTS. The CONSULTANT shall neither subcontract nor permit any portion of the Services to be subcontracted without the prior written consent of appropriate PROTECTION COALITION staff. Furthermore, the CONSULTANT shall be fully responsible for the acts or omissions of any subcontractors of any tier and of all persons employed by them. Neither the consent of PROTECTION COALITION staff nor anything contained herein shall be deemed to create any contractual relationship between the CONSULTANT's subcontractor of any tier and the PROTECTION COALITION.

ARTICLE 22. NOTICES. Any notice by either party to the other hereunder shall be considered duly served if delivered in person to the office of the authorized representative listed below, or if deposited in the mail, properly stamped with the required postage, and addressed to the authorized representative listed below. Either party may change its representative or the address thereof by giving the other party written notice. Unless changed, notices shall be sent to the following:

PROTECTION COALITION:	Upper Verde Protection Coalition Board Chairperson 7501 East Civic Circle Prescott Valley, AZ 86314
CONSULTANT:	Burgess & Niple, Inc. Mr. Edwin J. Muccillo, Jr., PE 1500 North Priest Drive Suite 101 Tempe, AZ 85281

ARTICLE 23. DISPUTES. Except as otherwise provided herein, any dispute arising out of the Services which is not otherwise disposed of by separate agreement shall be decided by authorized PROTECTION COALITION staff, who shall mail or otherwise furnish a written decision to the CONSULTANT's authorized representative. Such decision by the PROTECTION COALITION shall be final unless the CONSULTANT, within thirty (30) calendar days after notice of the PROTECTION COALITION's decision, files with the PROTECTION COALITION a written protest stating clearly and in detail the basis thereof. The CONSULTANT shall continue its performance under this Agreement during any such dispute resolution process.

ARTICLE 24. ACCOUNTING AND AUDITING. The CONSULTANT shall keep accurate and complete records in support of all payments hereunder in accordance with generally recognized accounting principles and practices. The PROTECTION COALITION or its audit representatives shall have the right at any reasonable time to examine, audit, and reproduce all records pertaining to costs, including (but not limited to) payrolls, employees' time sheets, invoices, and all other evidence of expenditures for the Services. Such records shall be kept by the CONSULTANT and made available for one (1) year after completion of the Services or termination of this Agreement, whichever is earlier.

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ARTICLE 25. NON-WAIVER. The failure of the PROTECTION COALITION to insist upon or enforce strict performance by the CONSULTANT of any of the provisions of this Agreement, or to exercise any of its rights hereunder, shall not be construed as a waiver or relinquishment to any extent of the PROTECTION COALITION's right to assert or rely upon such terms or rights on any future occasion.

ARTICLE 26. SEVERABILITY. Any provisions of this Agreement prohibited or rendered unenforceable by local, state, or federal law, or by the ruling of any court of competent jurisdiction, shall be ineffective only to the extent of such prohibition or unenforceability without invalidating the remaining provisions of this Agreement.

ARTICLE 27. VENUE AND GOVERNING LAW. This Agreement shall be deemed to have been made and entered into in Yavapai County, and shall be interpreted in accordance with the substantive and procedural laws of the State of Arizona.

ARTICLE 28. ATTORNEYS' FEES. In the event any action shall be instituted between the parties in connection with this Agreement, the party prevailing in such action shall be entitled to recover from the other party all of its costs, including reasonable attorneys' fees.

ARTICLE 29. SAVINGS CLAUSE. In the event any phrase, clause, sentence, paragraph, section, article or other portion of this Agreement shall become illegal, null or void or against public policy, for any reason, or shall be held by any court of competent jurisdiction to be illegal, null or void or against public policy, the remaining portions of this Agreement shall not be affected thereby and shall remain in force and effect to the fullest extent permissible by law.

ARTICLE 30. ENTIRE AGREEMENT. This Agreement constitutes the entire agreement between the parties hereto pertaining to the subject matter hereof and all prior and contemporaneous agreements, representations, negotiations and understandings of the parties hereto, oral or written, are hereby superseded and merged herein.

ARTICLE 31. CONFLICT-OF-INTEREST. This Agreement may be canceled without penalty pursuant to ARS §38-511 in the event of a conflict of interest as described therein by any person significantly involved in negotiating this Agreement on behalf of the PROTECTION COALITION.

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IN WITNESS WHEREOF, the parties hereto have executed or caused to be executed this Agreement by their duly authorized representatives on the day and year first-above written.

PROTECTION COALITION Members:

Town of Prescott Valley (a Municipal Corporation of Arizona)

_____

Harvey C. Skoog, Mayor

ATTEST:

_____

Diane Russell, Town of Prescott Valley Clerk

APPROVED AS TO FORM:

_____

Ivan Legler, Town of Prescott Valley Attorney

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City of Prescott (a Municipal Corporation of Arizona)

_____
Marlin Kuykendall, Mayor

ATTEST:

_____
Lynn Mulhall, City of Prescott Clerk

APPROVED AS TO FORM:

_____
John Paladini, City of Prescott Attorney

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Town of Chino Valley (a Municipal Corporation of Arizona)

_____

Chris Marley, Mayor

ATTEST:

_____

Jami Lewis, Town of Chino Valley Clerk

APPROVED AS TO FORM:

_____

Town of Chino Valley Attorney

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Yavapai County

_____
Chip Davis, Board Chairman

ATTEST:

_____
Ana Wayman-Trujillo, Clerk of the Board, Yavapai County

APPROVED AS TO FORM:

_____
Jack Fields, Board Attorney, Yavapai County

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Yavapai-Prescott Indian Tribe

_____
Ernest Jones Sr., President

ATTEST:

_____
Tribal Clerk

APPROVED AS TO FORM:

_____
Tribal Attorney

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Burgess & Niple, Inc. (CONSULTANT)

_____

Edwin J. Muccillo Jr.
Vice President

ATTEST:

_____

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Exhibit "A"

1. The Project Manager for the CONSULTANT is designated as Mr. Edwin J. Muccillo Jr., PE.

2. CONSULTANT will provide Project Management services to include the following:

    a. Generate and develop project ideas

    b. Manage/oversee and implement approved project ideas

    c. Facilitate PROTECTION COALITION Board Meetings

    d. Facilitate PROTECTION COALITION TAC Meetings

    e. Perform research as directed by the PROTECTION COALITION

    f. Generate position papers as directed by the PROTECTION COALITION

    g. Prepare and provide project updates to the PROTECTION COALITION

    h. Coordinate with other organizations as directed by the PROTECTION COALITION

    i. Provide administration of PROTECTION COALITION functions including preparing meeting agendas, preparing meeting minutes, reproduction, and invoicing

    j. Communicate with PROTECTION COALITION member governments as directed by the PROTECTION COALITION

3. CONSULTANT will provide the services outlined in Item 2 on an hourly rate basis in accordance with the PROTECTION COALITION's budget. Invoices will be sent monthly based on hourly billing rates provided below and reimbursable expenses. Subconsultants will also be invoiced on an hourly rate basis in accordance with the PROTECTION COALITION's budget. Subconsultants will be marked up at $5 per hour. These hourly rates are valid through June 30, 2014, and will be adjusted annually based on salary escalation, but they will not increase more than $5 per hour annually. Reimbursable expenses will include mileage at the IRS standard mileage rate, technology/computer charges, materials, and out-of-pocket expenses.

    a. Project Manager (Ed Muccillo) $205 per hour
    b. Assistant Project Manager (Rick Shroads) $140 per hour
    c. Project Coordinator (Dana Biscan) $140 per hour
    d. Grants Coordinator (Melody Reifsnyder) $80 per hour
    e. Project Engineer $130 - 150 per hour
    f. Administrative $75 per hour

4. The fiscal agent for the PROTECTION COALITION is designated as the Town of Prescott Valley. Mr. John Munderloh, Water Resources Manager, will be the point of contact for invoicing and issues concerning this Agreement.

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