

SUPPLEMENTAL
INTERGOVERNMENTAL AGREEMENT FOR
ADMINISTRATION OF REQUIREMENTS AND COSTS
OF THE BIG CHINO WATER RANCH PROJECT

CITY OF PRESCOTT
AND
TOWN OF PRESCOTT VALLEY

This Supplemental Intergovernmental Agreement for Administration of the Requirements and Costs of the Big Chino Water Ranch Project (“Administration Agreement”) is dated this ____ day of _____, 2010, by and between the City of Prescott (“Prescott”) and the Town of Prescott Valley (“Prescott Valley”), both of which are municipal corporations organized and existing under the laws of the State of Arizona. Prescott and Prescott Valley are sometimes referred to herein collectively as “Parties” and individually as “Party.”

RECITALS

A. WHEREAS, on December 7, 2004, Prescott and Prescott Valley entered into an Intergovernmental Agreement for the Sale of Water and Cost Participation (“BCWR Agreement”) in which they agreed to act jointly and cooperatively to develop, implement and maintain the Big Chino Water Ranch Project (“Project”); and

B. WHEREAS, the BCWR Agreement provided, among other things, that Prescott and Prescott Valley would share the costs of the Project (and the water delivered by the Project), with 45.9% apportioned to Prescott Valley and 54.1% apportioned to Prescott; and

C. WHEREAS, the costs of the Project include finance, design, construction, operation and maintenance costs as well as legal, lobbying, media relations and other costs to defend, study and provide information concerning the Project and to sustain the Project; and

D. WHEREAS, Prescott and Prescott Valley have been administering the requirements and costs of the Project since the effective date of the BCWR Agreement in accordance with their mutual understanding, express and implied, of the terms of the BCWR Agreement and the import of the partnership and cost sharing covenants therein; and

E. WHEREAS, Prescott and Prescott Valley now seek, for their mutual benefit and for full transparency, to (i) address and set forth the process they are using to administer Project requirements and costs, including the parameters for incurring costs (by contract or otherwise), apportioning costs and cost reimbursement, and (ii) reaffirm their covenants, commitments, cooperative partnership, cost sharing and mutual contracting authority under the BCWR Agreement; and

F. WHEREAS, the assurances given herein by Prescott and Prescott Valley to each other have been provided pursuant to (and as contemplated by) Arizona statutes, are bargained for (and given in consideration of) the undertaking of the obligations of the Parties as set forth herein, and are intended to be (and have been) relied upon by the Parties.

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

AGREEMENT

1. RECITALS.

Each of the Recitals set forth above is hereby incorporated into and made a part of this Administration Agreement, and the Parties acknowledge the accuracy and correctness of the Recitals.

2. TERM.

This Administration Agreement shall remain in full force and effect for so long as the BCWR Agreement remains in full force and effect.

3. PURPOSE; NO AMENDMENT OF BCWR AGREEMENT.

3.1 Memorialize Current Process. The purpose of this Administration Agreement is to memorialize the details of the process Prescott and Prescott Valley are using to administer Project requirements and costs in accordance with the understandings, express and implied, contained in the BCWR Agreement. The BCWR Agreement laid the groundwork for an unprecedented and historic joint partnership. This Administration Agreement is not intended to amend or modify any term of the BCWR Agreement. Rather, the Parties intend that the provisions of this Administration Agreement and the BCWR Agreement be interpreted and applied in a manner that (i) is complementary and consistent, and (ii) will further the Parties' joint interests in completing, implementing and sustaining the Project to meet their long-term water supply needs and the Safe Yield goal for the Prescott Active Management Area. It is the intent of the parties that this agreement shall be wholly administrative and shall deal solely with administrative details and matters pertaining to the Project.

3.2 Precedence of BCWR Agreement. Notwithstanding the foregoing, if any provision of this Administration Agreement is deemed by a court of competent jurisdiction to be inconsistent with the express terms of the BCWR Agreement, the terms of the BCWR Agreement shall govern.

3.3 Ratification of Past Administrative Actions. The Parties hereby ratify all expenditures and other administrative and contractual actions taken by one or both Parties to administer the requirements and costs related to the Project through and including the effective date of this Administration Agreement. This includes, but is not limited to, approvals by either Party of contracts and related costs of any consultant, technical advisor or other professional in furtherance of the Project. The Parties expressly acknowledge that all expenditures related to the Project incurred through and including the effective date of this Administration Agreement have been shared and coordinated with the administrations of both Parties and duly reviewed by each entity's Finance Director, to ensure the accuracy and appropriateness of all such expenditures.

4. PROJECT COSTS; DEFINITION, WHO MAY INCUR

4.1 Definition. Project Costs shall mean all: (i) finance, design, construction, operation, maintenance, staff and personnel costs of the Project; and (ii) legal, lobbying, media relations, website and other costs to implement, defend, promote and sustain the Project.

4.2 Who May Incur Project Costs. Subject to annual budgetary approval and appropriation by the Parties' respective Councils (as specified in Section 6 herein), Project Costs may be incurred by Prescott or Prescott Valley under the supervision of, and with the approval of, the Cost Administrators (as defined in Subsection 5.1 herein), and with such Council action (separate or joint) as may be deemed necessary by one or more of the Cost Administrators, in light of the type and amount of the Project Costs at issue and applicable law. It is expressly acknowledged and agreed that on and after the effective date of this Administration Agreement, the Prescott City Council shall approve every proposed contract in furtherance of the Project that requires a total expenditure by Prescott in excess of \$20,000.00 (or such other sum as may invoke a Council approval requirement under the provisions of Prescott's procurement code, as amended, during the term of this Administration Agreement).

5. ADMINISTRATION OF PROJECT COSTS; COST ADMINISTRATORS, COST APPORTIONMENT, BILLING

5.1 Cost Administrators. Cost Administrators for the Project shall include the Finance Directors, Town/City Managers and Town/City Attorneys for Prescott and Prescott Valley and may include the Parties' Water Resource Managers/Directors and/or Utilities Managers/Directors.

- 5.2 Apportionment of Costs. Per the BCWR Agreement, 54.1% of the Project Costs shall be paid by Prescott and 45.9% of the Project Costs shall be paid Prescott Valley at the time and in the manner specified in Section 11 of the BCWR Agreement. Every proposed contract for services for the Project that is subject to cost apportionment between the Parties under the BCWR Agreement shall be presented to the Cost Administrators for review and comment before execution. If one or more of a Party's Cost Administrators object to the contract for any reason, the Parties shall meet, discuss and try to reach agreement on whether to enter into the contract. If this administrative process is unsuccessful, then either Party may submit the contract to its Council for approval. Except as otherwise provided in Subsection 4.2 herein, if such Party's Council approves the proposed contract, the Party may elect to (i) mediate the dispute with the other Party in accordance with the mediation provisions in Section 15 of the BCWR Agreement, (ii) seek consent from both Parties' Councils to enter into the contract at its sole expense, or (iii) decline to enter into the contract.
- 5.3 Billing for Project Costs. Except as otherwise required in Section 11 of the BCWR Agreement, the Finance Director for each Party (or his/her designee) shall submit a bill to the other Party quarterly for its percentage of the Project Costs incurred by the billing Party during that quarter. The Party billed shall have sixty (60) days to remit payment to the billing Party. Notwithstanding the foregoing, it is expressly acknowledged that Prescott Valley is solely responsible for its in-house staff costs incurred in connection with the Project, and no portion of such costs shall be billed to, or paid by, Prescott. It is further understood and agreed that Prescott's in-house staff costs incurred in connection with the Project shall continue to be billed to Prescott Valley for partial payment in accordance with the terms of the BCWR Agreement, provided, however, that the Parties wish to clarify that Prescott's billable in-house staff costs now consist of the actual Project costs incurred by Prescott's in-house Legal Department, and the individual designated by Prescott's City Manager to manage the Project on behalf of Prescott.

6. BUDGETING FOR PROJECT COSTS; ANNUAL REVIEW AND APPROPRIATION, ADJUSTMENT TO BUDGETED AMOUNTS

- 6.1 Annual Review and Appropriation. Each Party shall include the portion of the Project Costs it expects to incur each year in its proposed, annual budget for approval by its Council. Only those Project Costs approved by each Party's Council for appropriation to the Project each year -- as part of the annual budget process -- may be expended, and must be expended by each Party only in the amounts and manner set forth in its approved budget; provided, however, that each Party's Finance Director may remedy any anticipated deficiency in line item funds required to cover actual, annual Project Costs in a particular line item or items in the manner

set forth in Subsection 6.2 herein, subject to applicable expenditure laws, accounting requirements and budgetary processes/approvals.

- 6.2 Adjustment to Budgeted Amount of Project Costs. In the event some portion of the Project Costs budgeted by a Party (for example, in a project line item or particularized category of the entire budget) and approved and appropriated by its Council is insufficient to meet actual, annual Project Costs, the Party's Finance Director may remedy the deficiency (i) administratively by making a budget transfer, re-allocation or re-appropriation, so long as the transfer is drawn from some portion of the funds approved by Council for appropriation to cover Project Costs; or (ii) legislatively, by seeking Council approval of a funds transfer from a contingency or other fund to cover the deficiency.

7. INCORPORATION BY REFERENCE; TERMS OF BCWR AGREEMENT.

Each of the following provisions of the BCWR Agreement (Exhibit A hereto) is expressly incorporated herein by this reference and shall govern the rights of the Parties to this Administration Agreement: (a) Section 11 therein (Payment Terms); Section 13 therein (Recordkeeping; Contact Information); Section 15 therein (Mediation); Section 16 therein (Default and Remedies); Section 17 therein (Miscellaneous Provisions); (b) Subsection 3.2 therein (Cancellation of the Agreement); and (c) those provisions, and the rights and obligations therein, set forth in the BCWR Agreement which either by their terms state or evidence the intent of the Parties that the provisions govern the terms of this Administration Agreement (or must be included) to give effect to the provisions of this Administration Agreement.

8. INDEMNIFICATION.

The Parties mutually agree to indemnify, defend and hold harmless the other Parties and their respective officers, directors, shareholders, employees and agents, for, from and against any and all costs (including, without limitation, attorneys' fees) losses, judgments, fines, penalties, assessments, charges or claims of any sort by third parties, including any governmental agencies, arising from, caused by, or related, directly or indirectly, to such Party's negligent acts or omissions pursuant to this Administration Agreement, or such Party's performance of its obligations under this Administration Agreement.

[SIGNATURE PAGES FOLLOW]

“PRESCOTT”

PASSED, APPROVED AND ADOPTED
by the Mayor and Council of the City of
Prescott this ____ day of _____, 2010.

MARLIN D. KUYKENDALL, Mayor

PURSUANT TO A.R.S. §11-952(D), THE
FOREGOING ADMINISTRATION
AGREEMENT HAS BEEN REVIEWED
BY THE UNDERSIGNED ATTORNEY
FOR THE CITY OF PRESCOTT, WHO
HAS DETERMINED THAT THE
ADMINISTRATION AGREEMENT IS IN
PROPER FORM AND IS WITHIN THE
POWERS AND AUTHORITY GRANTED
UNDER THE LAWS OF THIS STATE TO
THE CITY OF PRESCOTT.

ATTEST:

ELIZABETH A. BURKE, City Clerk

GARY D. KIDD, City Attorney

“PRESCOTT VALLEY”

PASSED, APPROVED AND ADOPTED
by the Mayor and Council of the Town of
Prescott Valley this ____ day of _____,
2010.

HARVEY C. SKOOG, Mayor

PURSUANT TO A.R.S. §11-952(D), THE
FOREGOING ADMINISTRATION
AGREEMENT HAS BEEN REVIEWED
BY THE UNDERSIGNED ATTORNEY
FOR THE TOWN OF PRESCOTT
VALLEY, WHO HAS DETERMINED
THAT THE ADMINISTRATION
AGREEMENT IS IN PROPER FORM
AND IS WITHIN THE POWERS AND
AUTHORITY GRANTED UNDER THE
LAWS OF THIS STATE TO THE TOWN
OF PRESCOTT VALLEY.

ATTEST:

DIANE RUSSELL, Town Clerk

IVAN LEGLER, Town Attorney