

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”) related to the Big Chino Water Ranch Project (“Project”); and
- B. WHEREAS, the BCWR Agreement provides, among other things, that Prescott is to be the owner of the project and will provide water delivered by the Project to Prescott Valley, which is to receive a share of such water delivered by the Project; and
- C. WHEREAS, the BCWR Agreement provides that Prescott Valley will 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
- D. WHEREAS, the costs of the Project include finance, design, construction, operation and maintenance costs as well as legal, professional services, and other costs to defend, study and provide information concerning the Project; and
- E. WHEREAS, Prescott has been designated to be in charge of administering the requirements and costs of the Project since the effective date of the BCWR Agreement in accordance with the mutual understandings and cost sharing covenants therein; and
- F. WHEREAS, Prescott and Prescott Valley seek to establish mutually agreed upon processes and procedures in furtherance of the terms of the BCWR Agreement to ensure that any and all contracts for services and all costs pertaining to the Project shall first be reviewed and approved by Prescott in accordance with its procurement code and processes prior to any expenses being incurred in order to address and set forth the processes to ensure that Prescott, as the Project owner charged with management oversight, verifies that all Project expenditures are first approved by Prescott, and that

Prescott exercises its required oversight of all Project expenditures, and that Prescott shall administer Project requirements and costs, including the parameters for incurring costs (by contract or otherwise), apportioning costs and cost reimbursement, and such expenditures as are reviewed and approved will be coordinated thereafter with Prescott Valley, which will approve such authorized expenditures in accordance with its respective budgetary and procurement processes; and

G. 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 Financial Process. The purpose of this Administration Agreement is to memorialize the details of the process to be utilized to administer Project requirements and costs in accordance with the terms of the BCWR Agreement and to confirm Prescott's principal role in terms of project management and financial oversight of the Project. 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 acknowledges Prescott's role as the owner of the Project while recognizing Prescott Valley as a Project participant under the BCWR Agreement and the commitments and responsibilities of each Party to the other pursuant to that agreement. 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. It is the intent of the Parties that this Administration Agreement shall be wholly administrative and shall deal solely with administrative details and matters pertaining to the Project.

3.2 Ratification of Past Administrative Actions. The Parties hereby acknowledge and agree that Prescott has conducted a financial review of any and all financial expenditures and other administrative and contractual actions taken by both Parties pertaining to 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 contracts in furtherance of the Project and this review has been completed prior to the effective date of this Administration Agreement. Financial staff of both Parties have reviewed these expenditures to ensure the expenditures have been in furtherance of the BCWR Agreement. The Parties hereto acknowledge that all reviewed and adjusted expenditures have been incurred through and including the effective date of this Administration Agreement and 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 prior to Prescott making any payments thereon, and authorize the crediting of such expenditures by Prescott Valley against its costs obligations under the BCWR Agreement in the amount of \$351,257.60 through the invoice dated May 26, 2010, as adjusted.

3.3 Agreement on Past Expenditures. The Parties mutually agree that these expenditures have been incurred to defend against challenges to the project, facilitate the acquisition of water needed by both Parties and to ensure that current and future legislation critical to Prescott's water rights and interests is maintained and not adversely affected, in furtherance of the BCWR Agreement.

4. PROJECT COSTS; DEFINITION, WHO MAY AUTHORIZE.

4.1 Definition. Project Costs shall mean certain: (i) finance, design, construction, operation, maintenance, staff and personnel costs of the Project; and (ii) legal, lobbying, media relations, and any and all other related costs provided such costs are approved and authorized by Prescott, to implement, defend, promote operate, maintain and sustain the Project.

4.2 Who May Authorize Project Costs. Subject to annual budgetary approval and appropriation by the Parties' respective Councils (as specified in Section 6 herein), it is expressly acknowledged and agreed that from and after the effective date of this Administration Agreement, the Prescott City Council, or the City of Prescott staff (for minor contracts within the guidelines and requirements of its procurement code), shall first approve every proposed contract in furtherance of the Project in accordance with the terms and provisions of its ordinances and procurement codes.

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

- 5.1 Cost Oversight Administrators. Prescott shall be the Cost Oversight Administrator for the Project. The Prescott City Manager, or his designee, shall oversee all Project Costs. The Prescott City Attorney shall oversee all legal costs and expenses. All Project costs and expenses will also be coordinated with the Prescott Finance Director. The Prescott City Manager, City Attorney, and Finance Director shall constitute the Cost Oversight Administrators under this Agreement. An accounting of all Project Costs approved by the Cost Oversight Administrators will thereafter be delivered to Prescott Valley through their designated personnel in accordance with the BCWR Agreement.
- 5.2 Contracts for Service. In order to ensure adequate fiscal oversight and financial review of all Project Costs, every proposed contract for services that is subject to cost apportionment between the Parties under the BCWR Agreement shall first be presented to the Cost Oversight Administrators for review, comment and approval. If the Cost Oversight Administrators object to a contract or any provision thereof for any reason, they shall meet and consult with the designated personnel from Prescott Valley and seek to reach agreement on whether to enter such contract. In the event the Parties are unable to reach agreement, after good faith discussions, as to approval of such contract, the determination by the City of Prescott shall be final.
- 5.3 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 by Prescott Valley at the time and in the manner specified in Section 11 of the BCWR Agreement, subject to certain apportionment formulas as set forth in the BCWR Agreement.
- 5.4 Billing for Project Costs. Prescott Valley is solely responsible for any and all 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 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. All other billing related to the Project shall first be approved and authorized by the City of Prescott in accordance with Subsection 5.2 herein.

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.

“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 AGREEMENT HAS BEEN REVIEWED BY THE UNDERSIGNED ATTORNEY FOR THE CITY OF PRESCOTT, WHO HAS DETERMINED THAT THE AGREEMENT IS IN PROPER FORM AND IS WITHIN THE POWERS AND AUTHORITY GRANTED UNDER THE LAWS OF THIS STATE TO THE CITY OF PRESCOTT.

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 AGREEMENT HAS BEEN
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ATTORNEY FOR THE TOWN OF
PRESCOTT VALLEY, WHO HAS
DETERMINED THAT THE AGREEMENT IS
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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