

RESOLUTION NO. 2020-1166

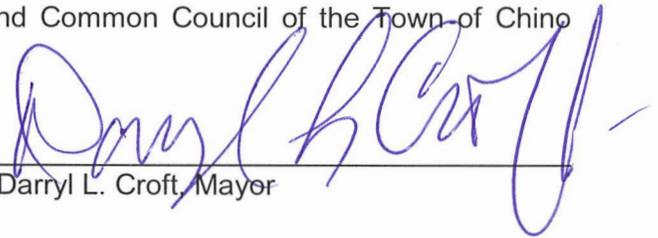
**A RESOLUTION OF THE MAYOR AND COMMON COUNCIL OF THE TOWN OF CHINO VALLEY, ARIZONA, APPROVING AN INTERGOVERNMENTAL AGREEMENT WITH THE CITY OF PRESCOTT RELATING TO COMMERCIAL WATER SERVICE.**

**BE IT RESOLVED** by the Mayor and Common Council of the Town of Chino Valley, Arizona as follows:

SECTION 1. The Intergovernmental Agreement between the Town of Chino Valley (the "Town") and the City of Prescott relating to commercial water service (the "Agreement") is hereby approved substantially in the form and substance attached hereto as Exhibit A and incorporated herein by this reference.

SECTION 2. The Mayor, the Town Manager, the Town Clerk and the Town Attorney are hereby authorized and directed to take all steps necessary to cause the execution of the Agreement and to take all steps necessary to carry out the purpose and intent of this Resolution.

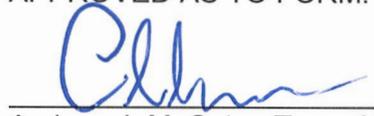
**PASSED AND ADOPTED** by the Mayor and Common Council of the Town of Chino Valley, Arizona this 28th day of April, 2020.

  
Darryl L. Croft, Mayor

ATTEST:

  
Jami C. Lewis, Town Clerk

APPROVED AS TO FORM:

  
Andrew J. McGuire, Town Attorney  
Gust Rosenfeld, PLC

I hereby certify the above foregoing Resolution No. 2020-1166 was duly passed by the Council of the Town of Chino Valley, Arizona, at a meeting held on April 28, 2020, and that quorum was present thereat and that the vote thereon was 7 ayes and 0 nays and 0 abstentions. 0 Council members were absent or excused.

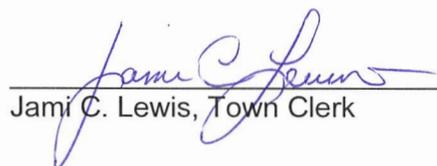
  
Jami C. Lewis, Town Clerk

EXHIBIT A  
TO  
RESOLUTION NO. 2020-1166

[Agreement]

See following pages.

**INTERGOVERNMENTAL AGREEMENT  
TOWN OF CHINO VALLEY  
AND  
CITY OF PRESCOTT**

THIS INTERGOVERNMENTAL AGREEMENT (the "Agreement"), is entered into as of the date of final signature, by and between the CITY OF PRESCOTT, a municipal corporation of Arizona (hereinafter the "City"), and the TOWN OF CHINO VALLEY, a municipal corporation of Arizona (hereinafter the "Town").

**WHEREAS**, the City operates a water distribution system that provides water service to certain parcels of land within the Town; and

**WHEREAS**, the Town operates a separate water distribution system that provides water service to other parcels of land within the Town; and

**WHEREAS**, the current location and extent of the Town's water distribution system prevents it from offering water service to some properties within its commercial corridor; and

**WHEREAS**, the Town and the City wish to enter into an agreement to allow the City to provide water service to those properties within the Town's commercial corridor that the Town currently lacks water infrastructure necessary to serve; and

**WHEREAS**, the City and the Town are each authorized to provide water pursuant to A.R.S. §9-240(B)(6); and

**WHEREAS**, A.R.S. §11-952 authorizes two or more public agencies (including the City and the Town) to contract for services or jointly exercise any powers common to the contracting parties, if the agreement meets certain requirements set forth in A.R.S. §11- 952.

**NOW, THEREFORE**, for and in consideration of foregoing introduction and recitals, which are incorporated herein by reference, the mutual covenants and promises herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

Section 1. **TERM.** The term of this Agreement shall be from June 1, 2020, through December 31, 2045, unless sooner terminated as set forth in Section 7 herein.

Section 2. **PURPOSE.** The purpose of this Agreement is to set forth the duties and responsibilities of the parties and to formalize the provision of water for commercial development purposes within the Town's "Commercial Corridor" as shown on the map attached as **Exhibit A**.

Section 3. PERFORMANCE. The performance commitments of the respective parties are as follows:

3.1 City Obligations. The City shall accept any request for water service submitted by a proposed commercial customer within the Town's Commercial Corridor after the date of this Agreement (each, a "New Commercial Customer") that provides evidence to the City that: (i) the proposed customer has received planning and zoning approval from the Town for the proposed development within the Town's Commercial Corridor; and (ii) the proposed customer satisfies all published requirements to receive water service from the City that are generally applicable to all prospective customers of the City (within and outside of the City's municipal boundaries). The City shall administratively approve any requests for water service which in the City's determination will use less than two acre feet per year. Requests greater than two acre feet per year are subject to review by the City's Water Issues SubCommittee and approval by City Council. Each New Commercial Customer shall be subject to all relevant City codes, policies, and permit procedures as an out-of-city water user, including the City's landscaping requirements found at L.D.C. § 6.5. The City further agrees to waive the requirement that out-of-city water users connect to City sewer service and the 60% return flow requirement for properties served pursuant to this Agreement. The City will not provide water service for any agricultural projects of any size or for residential service of any type.

3.2 Town Obligations. The Town shall be responsible for all planning and zoning approvals, permitting, and inspections applicable to all aspects of any proposed commercial development within the Town's Commercial Corridor excepting those required by the City for an out-of-city water user. The Town will require that the proposed commercial development connect to the Town's sewer service once a Town sewer main is abutting or adjacent to the property.

Section 4. BUDGETING AND FINANCING. The cost of the water provided for commercial development will be borne by the individual parties that contract for such service with the City. The Town will have no financial obligations as a result of this Agreement.

Section 5. FUTURE TRANSFER OF COMMERCIAL CUSTOMERS. If future circumstances allow the Town to begin serving the New Commercial Customers that connect to the City water distribution system pursuant to and after the date of this Agreement, the Town may retain an independent appraiser to determine the value of those commercial accounts. The Town may then offer to purchase the commercial accounts from the City at the appraised value determined by the independent appraiser and, upon receiving such an offer, the City may retain its own independent appraiser to determine the value of the commercial accounts. The City's appraisal will be provided to the Town at the time of receipt by the City. The City and Town agree to negotiate in good faith for the purchase of the commercial accounts. After a final value of those accounts is determined by the parties, the City shall transfer the commercial accounts to the Town at the agreed upon value. Thereafter, the Town shall be solely responsible for providing water service to the transferred commercial accounts and the City shall have no further obligation to those commercial customers. The Town and City further agree to negotiate in good faith concerning transfer of the water used to service the transferred commercial accounts in order to assure no loss of service by the customers.

Section 6. PARTIAL TRANSFER OF EFFLUENT STORAGE CREDITS. If the Town connects to its sanitary sewer system any New Commercial Customers served by the City pursuant to this Agreement, the City shall thereafter provide the Town with the actual aggregate water usage of all such New Commercial Customers, and the Town shall estimate the quantities of effluent generated by each such New Commercial Customer based upon the water usage. The Town shall manage such effluent in the same manner as all other effluent in the Town's sanitary sewer system, including recharging the effluent after treatment is complete to the same extent that the Town recharges other treated effluent generated by its sanitary sewer system. Thereafter, the Town shall transfer to the City, on an annual basis, 50% of the quantity of long-term storage credits issued to the Town by the Arizona Department of Water Resources for the effluent generated by the New Commercial Customers served by the City pursuant to this Agreement.

Section 7. TERMINATION. This Agreement may be terminated by either party for any reason whatsoever, effective 60 days after receipt of written notice by the other party. In the event of termination prior to the full term of this Agreement, the City will continue to provide water to any entity that has contracted with the City to do so, and to any entity that has submitted a completed application for water service satisfying the requirements of Section 3.1 above prior to the termination date, but shall take no new customers after the termination date.

Section 8. INDEMNIFICATION. Each party (as "indemnitor") agrees to indemnify, defend, and hold harmless the other party (as "indemnitee") for, from and against any and all claims, losses, liability costs, or expenses (including reasonable attorney's fees) (hereinafter collectively referred to as "claims") arising out of bodily injury of any person (including death) or property damage, but only to the extent that such claims which result in vicarious/derivative liability to the indemnitee, are caused by the negligent act, omission, misconduct, or other fault of the indemnitor, its officers, officials, agents, employees, or volunteers.

Section 9. NO PARTNERSHIP; NOT EMPLOYEES. Nothing herein is intended to create a partnership or joint venture between the parties, nor does it create an employment relationship between the personnel of the City and the Town.

Section 10. NOTICES. All notices provided in connection with this Agreement shall be in writing and shall be deemed to have been sufficiently delivered or served when presented personally or upon the third (3rd) day after being deposited in the United States mail, postage prepaid, by registered or certified mail, addressed as follows:

Town: Town Manager  
Town of Chino Valley  
202 N. State Route 89  
Chino Valley, AZ 86323

City: City Manager  
201 S. Cortez St.  
Prescott, AZ 86303

Section 11. FURTHER INSTRUMENTS. Each party hereto shall, promptly upon the request of the other, acknowledge and deliver to the other any and all further instruments and

assurances reasonably requested or appropriate to evidence or give effect to the provisions of this Agreement.

Section 12. AMENDMENT AND CONSTRUCTION. This Agreement sets forth the entire understanding of the parties as to the matters set forth herein as of the date of this Agreement and cannot be altered or otherwise amended except pursuant to an instrument in writing signed by each of the parties hereto. This Agreement is intended to reflect the mutual intent of the parties with respect to the subject matter hereof, and no rule of strict construction shall be applied against any party.

Section 13. CONFLICT OF INTEREST. This Agreement may be canceled pursuant to A.R.S. §38-511 in the event of a conflict of interest as described therein.

Section 14. DISPOSITION OF PROPERTY. The parties do not contemplate the joint purchase of any property under this Agreement. Upon termination of this Agreement for any reason, any property purchased by a party shall remain the property of that party, and any party having possession or use of the other party's property shall return such property to the owning party.

Section 15. NONDISCRIMINATION. The parties agree to comply with the nondiscrimination in government contract provisions of Executive Order No. 2009-09, and hereby incorporate by reference its terms into this Agreement as if fully set forth herein.

Section 16. RESOLUTIONS. Attached hereto are the authentic copies of each appropriate action by ordinance, resolution or otherwise of the governing body of each party authorizing the execution of this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement by and through their authorized representatives the day and year first above written.

CITY OF PRESCOTT, a municipal  
corporation of Arizona, (City)

\_\_\_\_\_  
Hon. Greg L. Mengarelli, Mayor

ATTEST:

\_\_\_\_\_  
Sarah Siep, City Clerk

The foregoing Intergovernmental Agreement has been submitted to me as Prescott City Attorney for review prior to its execution, pursuant to A.R.S §11-952(D), and I have determined that it is in proper form and is within the powers and authority granted to the City under the laws of

Arizona.

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Jon M. Paladini, City Attorney

TOWN OF CHINO VALLEY, a  
municipal corporation of Arizona, (Town)

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Darryl Croft, Mayor

ATTEST:

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Jami Lewis, Town Clerk

The foregoing Intergovernmental Agreement has been submitted to me as Attorney for the Town of Chino Valley for review prior to its execution, pursuant to A.R.S. §11-952(D), and I have determined that it is in proper form and is within the powers and authority granted to the Town under the laws of the State of Arizona.

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Andrew J. McGuire, Town Attorney