



Staff Report

Agenda Item: **Intergovernmental Agreement Between the Town of Clarkdale and the City of Cottonwood** – Approval of the revised IGA for the operation and maintenance of the Town of Clarkdale Municipal Water Utility by the City of Cottonwood.

Meeting Date: December 9, 2008

Prepared By: Wayne Debrosky, Utilities Director

Background: In January 2006 the Town of Clarkdale and the City of Cottonwood entered into an intergovernmental agreement for the operation and maintenance of the Town of Clarkdale Water Utility by the City of Cottonwood. Since that time the City of Cottonwood has provided the following services as part of that IGA: daily operations and record keeping, compliance sampling, regulatory reporting, utility billing and collections, operational oversight, and emergency response and repairs.

In 2008 the Town of Clarkdale took over the utility billing and collections for the Town accounts. In November 2008 the City of Cottonwood requested that the Town of Clarkdale provide operational oversight of the Town of Clarkdale Water Utility. As a response to this request the Town of Clarkdale Utilities Director will become the Operator of Record for the system as of December 10, 2008. The City of Cottonwood will still employ an Operations Manager to assist the Town of Clarkdale Utility Director manage the operation of the Town of Clarkdale Water Utility. The termination date on the current IGA was June 30, 2010 and the termination date of the revised IGA is June 30, 2009. The new termination date is in compliance with the direction expressed by the Council and recommended by our staff at the January, 2008 Strategic Planning Session. The revisions to the current IGA are meant to update the IGA and to reflect actual changes in Term of Agreement, operations, and services that have occurred in 2008 that are not outlined in the current IGA.

Recommendation: To approve the Revised Intergovernmental Agreement for the Operation and Maintenance of the Town of Clarkdale Municipal Water Utility by the City of Cottonwood.

**INTERGOVERNMENTAL AGREEMENT FOR THE OPERATION AND
MAINTENANCE OF THE CLARKDALE MUNICIPAL WATER UTILITY
BY THE CITY OF COTTONWOOD**

RECITALS

WHEREAS, the City of Cottonwood and the Town of Clarkdale have each been duly authorized by their electors to own and operate a municipal water utility; and

WHEREAS, the parties are in the process of cooperatively acquiring the business assets of the private water utility known as Cottonwood Water Works, Inc.; and

WHEREAS, upon such acquisition, the parties intend to divide certain assets of Cottonwood Water Works between them, such that each municipality will be able to and will in fact provide municipal water service to the residential and commercial customers of Cottonwood Water Works located within (and in the case of Cottonwood, without) its respective municipal boundaries, as well as future residential and commercial customers in and around the City and Town; and

WHEREAS, Cottonwood currently operates a municipal water utility, and therefore has or has access to certain personnel, systems, equipment, experience and expertise useful and/or necessary for the operation of such a utility, which Clarkdale does not yet possess; and

WHEREAS, the parties have conferred for the purpose of entering into this Intergovernmental Agreement whereby Cottonwood will, for a period of time, perform certain operations and maintenance services for that portion of the Cottonwood Water Works system that is located within the Town of Clarkdale and which, upon acquisition by Clarkdale, shall become and be known as the Clarkdale Municipal Water Utility; and

WHEREAS, this Agreement furthers the interests of both communities in jointly, cooperatively and efficiently administering their water resources; and

WHEREAS, the parties are authorized to enter into agreements for joint or cooperative action pursuant to A.R.S. § 11-952.

NOW, THEREFORE, in exchange for the mutual promises and conditions set forth below, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City

of Cottonwood and the Town of Clarkdale hereby agree as follows:

TERMS

I. BASIC SERVICES AND FEES

- A. **BASIC SERVICES** – In exchange for the Monthly Fee for Basic Services set forth in Section II(B) below, Cottonwood shall perform the following Basic Services for and on behalf of the Clarkdale Municipal Water Utility:
1. Provide daily routine operational, maintenance and inspection services for all system wells, pumps, pump stations, reservoirs/storage tanks, and disinfection systems. Provide all required chemicals. Any arsenic remediation equipment and chemicals are exempt from this stipulation.
 2. Prepare and submit to the appropriate state regulatory agencies all routine daily reports (with copies to Clarkdale). Cooperate with and assist Clarkdale in the preparation of other required plans and/or reports (including, for example, any required drought preparedness plan). Any arsenic remediation reports and sampling are exempt from this stipulation.
 3. Perform or provide for all regulatory agency-required water quality testing, including sampling, submission, and payment of all outside laboratory and ADEQ program fees. Arsenic remediation sampling is exempt from this stipulation.
 4. Develop and update as appropriate an Operations, Safety and Quality Assurance Plan for the Clarkdale Municipal Water Utility.
 5. Employ an Operations Manager to assist the Clarkdale utility director manage the operation of the Clarkdale Municipal Water Utility.
 6. Be available to provide on-call/emergency response and repairs outside of normal business

hours; provided, however, that the provision of emergency response and repair services shall result in an additional charge, as set forth in Section I(C) below.

7. Report all System emergencies, shortages, and outages to the Clarkdale Town Manager and Clarkdale Utility Director or other designated Town official as soon as practicable.
- B. MONTHLY FEE FOR BASIC SERVICES – As consideration for the Basic Services set forth in Section I (A) above, Clarkdale shall pay Cottonwood the sum of \$4,751.25 per month.
 - C. ADJUSTMENT OF FEES – Fees payable under this Agreement or any renewal thereof shall be subject to adjustment at any time an intervening change in the laws or regulations governing the operation of the system requires Cottonwood to perform different or additional services not contemplated at the time of the Agreement or renewal; or if, for any reason, any regulatory agency with jurisdiction or oversight responsibility over the Clarkdale Municipal Water Utility substantially and materially increases its testing requirements under existing statutory or regulatory authority.
 - D. UPKEEP AND MAINTENANCE OF SYSTEM GROUNDS – Clarkdale shall be responsible for keeping the outside grounds and areas of the Clarkdale Municipal Water Utility, in clean and safe condition, including landscaping, washing, sweeping, painting, etc. with respect to such outside areas only. Cottonwood shall timely notify Clarkdale of any such tasks that Cottonwood believes should be performed.

II. SPECIAL AND EMERGENCY SERVICES AND FEES

- A. SPECIAL SERVICES – In addition to the Basic Services set forth in Section I(A) above, the following Special Services may be provided for an additional fee, as set forth or calculated in accordance with Section II(C) below:

1. Emergency response and/or repairs.
 2. Blue staking.
 3. Service line extension or repair; provided, however, that Cottonwood shall have sole discretion over whether to perform such tasks itself, or whether to have such tasks performed by outside contractors. In either case, the fee for such services shall be Cottonwood's actual cost plus a premium of 10 percent.
 4. Data collection and analysis (including but not limited to the generation and submission of GIS data for the system).
 5. Development and implementation of a backflow protection and monitoring program.
 6. Capital improvement projects.
- B. PRIOR AUTHORIZATION FOR SPECIAL AND EMERGENCY SERVICES – Except for Basic Services and emergency services reasonably predicted to cost less than \$1,000.00 (for which authorization is hereby deemed given), Cottonwood shall use its best efforts to obtain prior approval from the Town Manager or another responsible Town official before providing any services under this Agreement. However, in the event that Cottonwood determines that it must provide or arrange for the provision of repairs or other services to or on account of the Clarkdale Municipal Water Utility on an expedited or emergency basis in order to preserve the health or safety of the Citizens of Clarkdale, and is unable to obtain prior authorization for such services, Clarkdale specifically agrees that it shall nevertheless be liable to Cottonwood for any expenses so incurred, notwithstanding the fact that they cost more than \$1,000.00 to provide, and regardless of their actual cost. In all such cases, Cottonwood shall notify Clarkdale of the circumstances surrounding the exigency or emergency

as soon as practicable after the occurrence or discovery of any such event(s).

C. FEES FOR SPECIAL AND EMERGENCY SERVICES

1. The fee for all other Special and Emergency Services shall be determined by reference to the Schedule of Fees for Manpower and Equipment attached hereto as Exhibit A (as that Exhibit may be amended from time to time by Cottonwood), or as otherwise agreed to by the parties. In the absence of a specific provision or mechanism for determining the cost of a particular service, the charge for such service shall be Cottonwood's cost plus a premium of 10 percent.

III. BILLING AND PAYMENT – Cottonwood shall invoice Clarkdale monthly for all Basic, Special, and Emergency Services provided in the month immediately preceding the month in which the invoice is issued, and Clarkdale shall pay such invoices within 20 days of receipt.

IV. TAXES

- A. Clarkdale shall be responsible for any and all assessments of tax upon the Clarkdale Municipal Water Utility, including taxes incurred and/or paid by Cottonwood on Clarkdale's behalf for goods, supplies, equipment or services used in performing Cottonwood's obligations under this Agreement.
- B. For so long as Cottonwood performs the billing and collections functions for Clarkdale, Cottonwood shall provide Clarkdale with monthly reports on the amount of transaction privilege taxes billed and collected on Clarkdale's behalf, and Clarkdale shall be responsible for making all required reports and payments to the Arizona Department of Revenue.

V. SECURITY/ACCESS TO SYSTEM AND FACILITIES – The parties agree that maintaining the safety and security of the Clarkdale Municipal Water Utility is of the highest priority, and the parties shall fully cooperate with each other toward that end for so long as Cottonwood is engaged to operate the system.

Upon a Town of Clarkdale employee placing the appropriate ADEQ water certification on water system 13-024 and becoming the responsible operator in charge of that system, access to Town water facilities shall be at the discretion of said responsible operator. The City of Cottonwood utility department staff shall continue to have unlimited access to Town water facilities to enable operation of the Town water system in accordance with this agreement.

VI. EFFECTIVE DATE/TERM OF AGREEMENT

- A. This Agreement shall become effective on the date that Cottonwood and Clarkdale first take possession of the Business Assets of Cottonwood Water Works (i.e., the "Closing Date"), and shall continue through June 30, 2009, unless extended or sooner terminated in accordance with any of the other the provisions hereof.
- B. Prior to June 30, 2008, the parties shall confer for the purpose of determining whether it would be in the best interests of both parties to extend this Agreement beyond June 30, 2010.

VII. TERMINATION

- A. Termination For Cause. Either party may terminate this Agreement for cause, including but not limited to any matter constituting a material breach of this Agreement, upon 30 days written notice to the other party, but only if the non-terminating party fails to correct or conform its conduct to the requirements of this Agreement within that time. Without limiting the generality of the forgoing, Cottonwood shall be deemed to have cause to terminate this Agreement at any time the past due balance owed to Cottonwood for services provided under this Agreement exceeds \$75,000.00.
- B. Termination At Will. Either party may terminate this Agreement for any reason, or for no reason, by so notifying the other party in writing of its intent to do so; provided, however, that the terminating party must notify the non-terminating party of its intent to terminate this Agreement at least 180 days prior to the end of the fiscal year (i.e., June 30) in which the termination is to become effective.

VIII. INSURANCE AND INDEMINICATION

- A. Pursuant to A.R.S. § 23-1022(D), any employee of Cottonwood who works within the jurisdictional limits of Clarkdale under this Agreement shall be deemed to be an employee of both Cottonwood and Clarkdale for the purposes of that statute (or any successor statute); provided, however, that Cottonwood shall be deemed to be the primary employer and shall therefore be solely liable for the payment of workers' compensation benefits thereunder.
- B. Throughout the term of this Agreement, each party shall maintain a policy of commercial general liability insurance with respect to all premises and activities that are the subject of this agreement, in an amount no less than two million dollars per occurrence for bodily injury and/or property damage. Each policy shall name the other party as an additional insured.
- C. Throughout the term of this Agreement, Cottonwood shall maintain a policy of automobile liability insurance covering any and all motor vehicles used in performance of this Agreement, in an amount no less than two million dollars combined single limit.
- D. Each party shall provide the other with and maintain written documentation of all insurance coverage required under this Agreement.
- E. Each party to this Agreement and its officers, employees, agents and representatives, shall indemnify and hold harmless the other party and its officers, employees, agents and representatives from any and all claims, liabilities, damages, suits, expenses and losses of any kind or nature whatsoever to the extent that the same are occasioned by the negligence of the indemnifying party. However, nothing herein shall be construed as a waiver by either party of its right to bring an action for contribution against the other or against any other person or entity.

IX. NOTICES – All notices required or permitted to be delivered under this agreement shall be hand delivered or sent via certified mail, return receipt requested, addressed as follows, or

to such other addresses or addressees as the parties may from time to time designate in writing:

To Clarkdale: Town Manager
 Town of Clarkdale
 PO Box 308
 Clarkdale, AZ 86324

To Cottonwood: City Manager
 City of Cottonwood
 827 N. Main Street
 Cottonwood, AZ 86326

All notices delivered in substantial conformance with this Section shall be deemed delivered on the date received, or five days from the date of mailing, whichever occurs sooner.

X. ADDITIONAL TERMS AND PROVISIONS

- A. Independent Contractor. The parties agree that in performing services under this Agreement, Cottonwood is an independent contractor and not an employee, agent, attorney, officer or representative of Clarkdale.
- B. Identification. At all times while providing services in Clarkdale under this Agreement, Cottonwood's employees shall carry or wear identification identifying themselves as such.
- C. Motor Vehicle/Equipment Operation and Licensure. All of Cottonwood's employees operating vehicles and/or equipment under this Agreement shall be properly licensed and/or certified to do so.
- D. Cancellation for Conflict of Interest. This Agreement may be cancelled at any time pursuant to ARS Section 38-511, the provisions of which are incorporated into this Agreement as if fully set forth herein.
- E. Compliance with Applicable Law; Nondiscrimination in Employment. In performing their respective obligations under this Agreement, the parties shall comply with all applicable local, state and federal statutes, regulations and ordinances, including without limitation Executive Order 99-4, concerning nondiscrimination in employment.

- F. Merger and Modification. This instrument sets forth the entire agreement between the parties with respect to the subject matter hereof, and all prior or contemporaneous written or verbal agreements, representations or understandings are hereby merged herein and shall be of no force and effect. No modification to this Agreement shall be effective unless evidenced by a writing signed by both parties.

- G. Recordation. Upon execution, this Agreement shall be filed in the office of the Yavapai County Recorder, as provided by A.R.S. 11-952(G).

- H. Authorization. The parties whose signatures appear below hereby warrant that they are and have been duly authorized to execute this Agreement and to bind their respective principals hereto.

- I. Headings; Interpretation. The headings set forth in this Agreement are for convenience only, and shall not be used to interpret, explain or modify the terms set forth herein. Moreover, no ambiguity in any term or provision of this Agreement shall be interpreted in favor of one party on account of the fact that it was drafted by the other.

AGREED:

FOR THE CITY OF COTTONWOOD:

 Diane Joens, Mayor

Date: _____

APPROVED AS TO FORM:

 Mangum, Wall, Stoops and
 Warden PLLC, City Attorneys

Date: _____

ATTEST:

Marianne Jimenez
City Clerk

Date: _____

FOR THE TOWN OF CLARKDALE:

Doug Von Gausig, Mayor

Date: _____

APPROVED AS TO FORM:

Boyle, Pecharich, Cline and
Whittington, Town Attorneys

Date: _____

ATTEST:

Kathy Bainbridge, Town Clerk

Date: _____