Staff Report

Agenda Item: **INTERGOVERNMENTAL AGREEMENT RELATING TO PRESERVATION OF FOREST LANDS AND THE CITY OF COTTONWOOD'S PROPOSED ANNEXATION OF 8.5 SQUARE MILES OF COCONINO NATIONAL FOREST** – Discussion and consideration regarding an intergovernmental agreement between the City of Cottonwood and the Town of Clarkdale relating to the preservation of Forest Service land and the City of Cottonwood's proposed annexation of 8.5 square miles of Coconino National Forest.

Staff Contact: Gayle Mabery, Town Manager

Meeting Date: August 25, 2009

Background: On September 16, 2008, the Cottonwood City Council directed their staff to begin the process of annexing the Forest Service lands referenced on the attached map, which led to the filing of the required blank annexation petition by the City on September 17, 2008. The City completed the required Public Hearing and waiting period process, which gave the City the authority to take action to approve the annexation anytime between October 18, 2008 and October 18, 2009. Under Arizona law, no other municipality has the right to annex these lands during this time frame.

In October, 2008, the Clarkdale Town Council expressed concern that the process for annexation of these forest lands might require the annexation ordinance to be adopted before more attractive alternatives were considered. After hearing a mutual desire from both Councils to retain these lands in the National Forest, the Town of Clarkdale drafted a proposed IGA in order for the two Councils to fully explore such an option. The Clarkdale Town Council and the Cottonwood City Council met in Joint Session on August 14th to discuss, in part, this proposed Intergovernmental Agreement. The most pertinent provisions of the IGA include:

1. Cottonwood will not take action to finalize the annexation of the lands described in Exhibit A and subject to the blank annexation petition filed by Cottonwood with the Yavapai County Recorder's Office on September 18, 2008.

2. Cottonwood and Clarkdale agree not to file annexation petitions for any lands identified in Exhibit A at any time that the agreement is in effect.

3. The Agreement shall be effective for a period of one year commencing on October 1, 2009, and expiring on September 30, 2010. In the event written notice is not given by either party to this agreement to the other 60 days prior to the termination date as hereinabove provided, this agreement shall automatically be extended on the same terms and conditions herein provided, all for an additional period of one year. Said agreement shall continue thereafter for one-year periods

unless either party hereto gives at least 60 days written notice in advance of the then applicable expiration date, to the other party that the party does not wish to extend this agreement for an additional one-year term.

4. Further, Clarkdale agrees not to take action to annex any portion of the lands identified in Exhibit A until 60 days after termination of this agreement.

The City of Cottonwood has a guaranteed right to annex the forest lands under discussion until October 18, 2009. Paragraph 4 was included in order to assure that a "first right of refusal" on the forest lands exists for Cottonwood in the event of a land exchange proposal.

After lengthy discussion at the August 14th Joint Meeting, both Councils directed their respective staffs to place the Intergovernmental Agreement on their upcoming agendas for consideration. It should be noted that there did not appear to be consensus among the members of the Cottonwood Council with regard to the Intergovernmental Agreement. In fact, several members of the Cottonwood City Council suggested that the Agreement be amended, or an additional agreement be drafted, to include provisions regarding partnering on decisions with regard to the 1800 acres of Forest Land currently located in the Clarkdale Town Boundaries. Clarkdale Council Members encouraged Cottonwood to bring a proposal forward if they so desired so that further discussion could be held on Cottonwood's proposal.

Recommendation: Staff recommends the Council approve the IGA, and authorize staff to convey the IGA to the City of Cottonwood with a letter encouraging the City to forward a proposal to Clarkdale on the Forest Lands located in Clarkdale if they so desire.

When recorded return to:
Town of Clarkdale
Town Clerk
PO Box 308
Clarkdale, AZ 86324

INTERGOVERNMENTAL AGREEMENT RELATING TO PRESERVATION OF FOREST LANDS

THIS AGREEMENT, made and entered into this _____ of _____, 2009, by and between the CITY OF COTTONWOOD, a municipal corporation of the State of Arizona, hereinafter called "Cottonwood", and the TOWN OF CLARKDALE, a municipal corporation of the State of Arizona, hereinafter called "Clarkdale".

WHEREAS, Cottonwood and Clarkdale have formerly adopted Resolutions establishing common bonds and principles for regional coordination and cooperation in the land use planning and development decisions in the Verde Valley; and,

WHEREAS, Cottonwood and Clarkdale have both expressed the desire that their respective communities maintain their unique characteristics and distinctive gateways to surrounding rural and open space lands and further desire to prevent their communities from growing together in a manner that would detract from individual community and regional identity; and,

WHEREAS, both Cottonwood and Clarkdale have participated in and support the Verde Valley Regional Use Plan and a central presumption of that plan is that any land not specifically designated for growth is intended to be preserved in its current, open, agricultural or rural density condition; and,

WHEREAS, Cottonwood and Clarkdale agree that they would like to see the lands described in "Exhibit A" retained as part of the Coconino National Forest, and not subject to a land exchange; and,

WHEREAS, Cottonwood and Clarkdale are concerned that annexation by a municipality could make the lands described in "Exhibit A" more likely to be subject to land exchange; and,

WHEREAS, Cottonwood has previously filed a blank annexation petition as to the real property described in "Exhibit A", which real property is located with the Coconino National Forest; and,

WHEREAS, pursuant to A.R.S. 9-240-19 and 11-952, Cottonwood and Clarkdale are authorized to enter into such agreement.

NOW THEREFORE, the parties mutually agree as follows:

1. Cottonwood will not take action to finalize the annexation of the lands described in Exhibit A and subject to the blank annexation petition filed by Cottonwood with the Yavapai County Recorder's Office on September 18, 2008.

2. Cottonwood and Clarkdale agree not to file annexation petitions for any lands identified in Exhibit A at any time that this agreement is in effect.

3. This Agreement shall be effective for a period of one year commencing on October 1, 2009, and expiring on September 30, 2010. In the event written notice is not given by either party to this agreement to the other 60 days prior to the termination date as hereinabove provided, this agreement shall automatically be extended on the same terms and conditions herein provided, all for an additional period of one year. Said agreement shall continue thereafter for one-year periods unless either party hereto gives at least 60 days written notice in advance of the then applicable expiration date, to the other party that the party does not wish to extend this agreement for an additional one-year term.

4. Further, Clarkdale agrees not to take action to annex any portion of the lands identified in Exhibit A until 60 days after termination of this agreement.

5. All notices or demands upon any party to this Agreement shall be in writing and shall be delivered in person and by United States certified mail, addressed as follows:

To Clarkdale:	To Cottonwood:
Town Clerk Town of Clarkdale 890 Main Street P.O. Box 308 Clarkdale, AZ 86324	City Clerk City of Cottonwood 827 North Main Street Cottonwood, AZ 86324
With a Copy to:	With a Copy to:
Town Manager Town of Clarkdale 39 N. 9th Street P.O. Box 308 Clarkdale, AZ 86324	City Manager City of Cottonwood 827 North Main Street Cottonwood, AZ 86324

6. Cottonwood and Clarkdale will work with the Coconino National Forest in an effort to ensure that these lands remain in the inventory of the national forest and out of consideration for future land exchanges. Cottonwood and Clarkdale will advocate that the Forest Plan for the areas identified in Exhibit A should reflect the desire to protect these lands from exchange. Cottonwood and Clarkdale may also undertake other efforts as may be deemed appropriate to try to ensure that these lands remain in the inventory of the national forest and out of consideration for future land exchanges

7. Cottonwood will indemnify and hold Clarkdale harmless from any and all claims for damages made by third parties arising from or related to the provisions relating to this agreement and will indemnify Clarkdale against any damages that may be paid or ordered to be paid to third parties, together with cost of defense,

including reasonable attorney's fees. Those claims arising solely out of the errors or omissions of Clarkdale are exempted from the provisions of this paragraph.

8. Clarkdale will indemnify and hold Cottonwood harmless from any and all claims for damages made by third parties arising from or related to the provisions relating to this agreement and will indemnify Cottonwood against any damages that may be paid or ordered to be paid to third parties, together with cost of defense, including reasonable attorney's fees. Those claims arising solely out of the errors or omissions of Cottonwood are exempted from the provisions of this paragraph.

9. If a dispute arises out of or relates to this Agreement, or breach thereof, and if the dispute cannot be settled through negotiation, the parties agree first to settle the dispute through mediation before resorting to arbitration, litigation or some other dispute resolution procedure. In the event that the parties cannot agree upon the selection of a mediator within ten (10) days, either party may request the Presiding Judge of the Superior Court of Yavapai County to assign a mediator from a list of real estate experienced mediators maintained by the Arizona Municipal Risk Retention Pool.

10. All books, accounts, reports, files and other records relating to this Agreement shall be subject to inspection and audit by the Town for five years after completion of the Agreement as provided in ARS 35-214.

11. The parties agree to comply with Executive Order 99-4 concerning equal opportunity.

12. This Agreement shall be filed with the Secretary of State or the County Recorder as provided in ARS 11-952.

13. This Agreement may be cancelled pursuant to the provisions of ARS 38-511.

14. In accordance with ARS 11-952(D), this agreement has been submitted to each party's legal counsel. This Agreement also includes a written determination of each party's legal counsel that the parties are authorized to enter into this Agreement and that the Agreement is in proper form.

15. This Agreement contains the entire agreement of the parties with respect to the subject matter hereof, and it may be amended or modified only by an instrument in writing signed by both parties.

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed by their duly authorized officials on the aforementioned date.

TOWN OF CLARKDALE

_____
Doug Von Gausig, Mayor

ATTEST:

_____
Kathy Bainbridge, Town Clerk

CITY OF COTTONWOOD

_____
Diane Joens, Mayor

ATTEST:

_____
Marianne Jimenez, City Clerk

TOWN OF CLARKDALE
ATTORNEY APPROVAL FORM

Pursuant to ARS 11-951 through 11-954 the undersigned has reviewed the attach Intergovernmental Agreement between the Town of Clarkdale and the City of Cottonwood and find the Agreement to be in proper form and within the powers and authority granted to the Town of Clarkdale under the laws of the State of Arizona and the Town Code.

Dated this _____ day of _____, 2009

_____
Robert S. Pecharich
Boyle, Pecharich, Cline, Wittington & Stallings, P.L.L.C.
Clarkdale Town Attorney

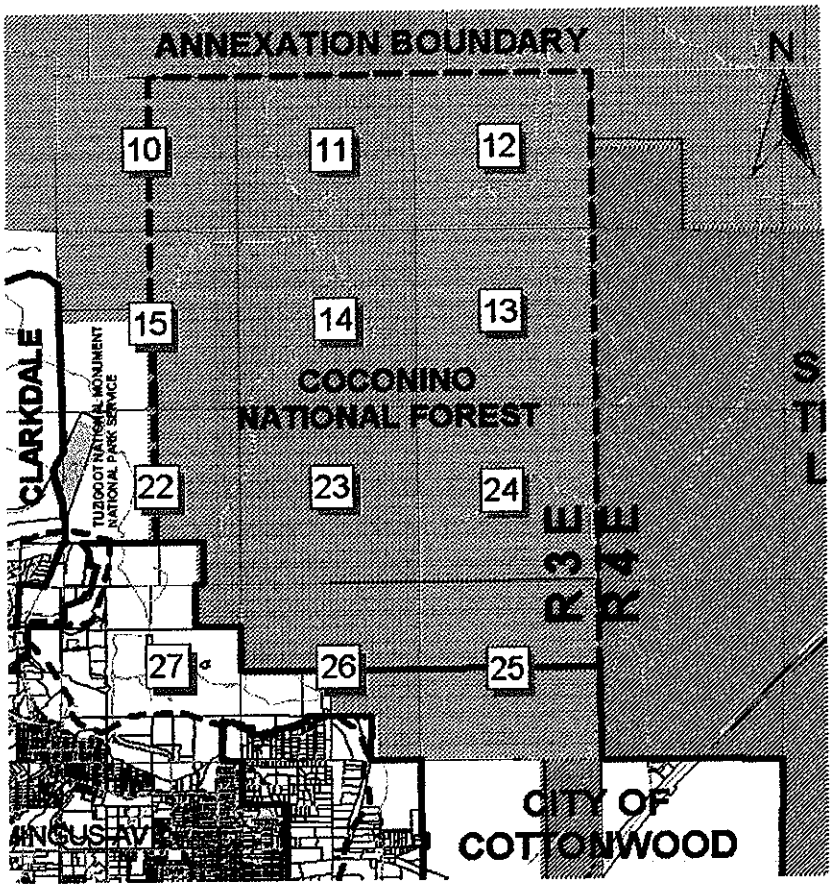
CITY OF COTTONWOOD
ATTORNEY APPROVAL FORM

Pursuant to ARS 11-951 through 11-954 the undersigned has reviewed the attach Intergovernmental Agreement between the City of Cottonwood and the Town of Clarkdale and find the Agreement to be in proper form and within the powers and authority granted to the
City of Cottonwood under the laws of the State of Arizona and the City Code.

Dated this _____ day of _____, 2009

_____
Steve Horton
Magnum, Wall, Stoops and Warden
Cottonwood City Attorney

EXHIBIT A



LEGAL DESCRIPTION: A territory of land located in the T16N, R3E, G&SRB&M, Yavapai County, Arizona, more particularly described as follows:

Sections 11, 12, 13, 14, 23, 24; and the north ½ of Section 25; and the north ½ of Section 26; and the east ½ of Section 10; and the east ½ of Section 15; and that portion of Sections 22 and 27 lying in the Coconino National Forest.