



Staff Report

Agenda Item: **CONSIDERATION OF A RESOLUTION** – Consideration and possible approval of a Resolution of the Town of Clarkdale, Yavapai County, Arizona, authorizing the Town of Clarkdale to enter into an Intergovernmental Agreement relating to the Municipal Boundaries between the City of Cottonwood, Arizona, and the Town of Clarkdale, Arizona.

Staff Contact: Gayle Mabery, Town Manager

Meeting Date: November 10, 2009

Background: On September 16, 2008, the Cottonwood City Council directed their staff to begin the process of annexing approximately 8 ½ square miles of Coconino National Forest Lands north of Cottonwood and east of Clarkdale. 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.

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, Town Manager Mabery drafted a proposed IGA, in coordination with City Manager Bartosh, in order for the two Councils to fully explore such an option. By the end of August, 2009, Clarkdale had adopted the agreement, but the Cottonwood Council chose not to adopt it.

Subsequent to both Council actions, the only entity that was believed to be qualified to sign Cottonwood's annexation petition, Qwest, Inc., notified the Arizona Department of Revenue that, after further review, they do not have any property of value in the area proposed for annexation. This notification eliminated Qwest's eligibility as a signator on the annexation petition.

Among other things, annexation laws in the State of Arizona presume that an annexation petition will be signed by an owner of personal or real property within the annexation area (see A.R.S. 9-471). Clarkdale's legal position was that, because this annexation contains only US Forest Service land, which has not been valued and for which the Forest Service cannot sign a petition, Cottonwood's annexation proposal resulted in an unsuccessful annexation.

With this in mind, the conditions that prompted Clarkdale to approve the IGA for Forest Preservation no longer existed, and Clarkdale rescinded the IGA that it had approved August 25th. The act to rescind the IGA included a statement that, whether or not the annexation of forest land was unsuccessful, Clarkdale supported an opportunity for Clarkdale and Cottonwood to enter into discussions about developing boundary agreements between the communities.

During the regular Cottonwood City Council meeting on October 8th, 2009, their council decided to table the annexation of the forest land north of the city and explore the possibility of a boundary agreement with the Town of Clarkdale. Both Councils reviewed a draft boundary agreement during an executive session on November 3rd, 2009 and directed staff to continue negotiations. Based on the most recent negotiations, a revised agreement is being sponsored by Vice Mayor Pfeiffer in Cottonwood and Councilmember Dehnert in Clarkdale on both Councils November 10th agendas.

The intent of the boundary agreement is to define specific lines that neither community will cross in pursuit of future annexations and will serve to prevent future disputes regarding intended annexations. Importantly, the approval of such an agreement will relieve both communities from speculation as to the others intended annexations in these particular areas. The agreement may also lay important groundwork for cooperation among all five incorporated communities in the Verde Valley.

The agreement includes an initial term that expires March 31, 2012. The agreement will automatically renew for additional two-year periods unless either of the parties provides written notice of intent not to renew at least 180-days before the agreement is scheduled to expire.

Recommendation: If the Council desires to approve this Intergovernmental Agreement, the appropriate motion is:

“I move to approve the Resolution authorizing the Town of Clarkdale to enter into an Intergovernmental Agreement relating to the Municipal Boundaries between the City of Cottonwood, Arizona, and the Town of Clarkdale, Arizona.”

When recorded return to:

**Town of Clarkdale
ATTN: Town Clerk
P.O. Box 308
Clarkdale, AZ 86324**

And

**City of Cottonwood
ATTN: City Clerk
827 N. Main Street
Cottonwood, AZ 86326**

**INTERGOVERNMENTAL AGREEMENT RELATING TO THE MUNICIPAL
BOUNDARIES BETWEEN THE CITY OF COTTONWOOD, ARIZONA, AND THE
TOWN OF CLARKDALE, ARIZONA**

RESOLUTION NO. 1322

A RESOLUTION OF THE MAYOR AND COUNCIL OF THE TOWN OF CLARKDALE, YAVAPAI COUNTY, ARIZONA, AUTHORIZING THE TOWN OF CLARKDALE TO ENTER INTO A INTERGOVERNMENTAL AGREEMENT RELATING TO THE MUNICIPAL BOUNDARIES BETWEEN THE CITY OF COTTONWOOD, ARIZONA, AND THE TOWN OF CLARKDALE, ARIZONA

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, the Cottonwood City Council and the Clarkdale Town Council have individually expressed a desire to work together on a formal Boundary Agreement which would define future annexation areas to the north and south of both communities; and,

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE TOWN OF CLARKDALE AS FOLLOWS:

Section 1. THAT, the Town of Clarkdale, hereby approves the Intergovernmental Agreement Related to the Municipal Boundaries between the Town of Clarkdale and the City of Cottonwood, attached hereto as Exhibit A.

Section 2. THAT, the Mayor and Staff are hereby authorized to execute the attached Intergovernmental Agreement Related to the Municipal Boundaries between the Town of Clarkdale and the City of Cottonwood and to take any and all steps deemed necessary to accomplish the above.

PASSED, APPROVED AND ADOPTED by the Mayor and Council of the Town of Clarkdale this 10th day of November, 2009.

APPROVED:

ATTEST:

Doug Von Gausig, Mayor

Kathy Bainbridge, Town Clerk

EXHIBIT "A"

**INTERGOVERNMENTAL AGREEMENT RELATING TO THE MUNICIPAL
BOUNDARIES BETWEEN THE CITY OF COTTONWOOD, ARIZONA, AND THE
TOWN OF CLARKDALE, ARIZONA**

THIS AGREEMENT, is made and entered into 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, the Cottonwood City Council and the Clarkdale Town Council have individually expressed a desire to work together on a formal Boundary Agreement which would define future annexation areas to the north and south of both communities; 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. Effective Date and Term – The effective date for this agreement shall be November 10, 2009. The initial term of this agreement shall expire on March 31, 2012. In the event written notice is not given by either party to this agreement to the other 180 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 two years beginning April 1, 2012. Said agreement shall continue thereafter for two-year periods unless either party hereto gives at least 180 days advance written notice of the then applicable expiration date, to the other party that the party does not wish to extend this agreement for an additional two-year term.
2. Exhibit A delineates the potential future boundaries of Clarkdale and Cottonwood on the northern end of both communities. Clarkdale and Cottonwood agree to respect potential future boundaries of each other as shown on Exhibit A. Clarkdale shall not seek to annex any portion of the lands on the east side of the line (nor lands to the south where an east/west line is indicated in Section 22 nor lands to the north where an east/west line is

indicated on the boundary of Section 11 described in Exhibit A). Cottonwood shall not seek to annex any portion of the lands on the west side of the line (nor lands to the north where an east/west line is indicated in Section 22; nor lands to the south where an east/west line is indicated on the boundary of Section 11) described in Exhibit A, except as provided in Exhibit B.

3. Exhibit B identifies a cluster of private properties that lie between the current boundaries of Clarkdale and Cottonwood. Neither Clarkdale nor Cottonwood currently has an expressed interest in annexing these private lands. However, if at any time in the future the private property owners in this area approach either Clarkdale or Cottonwood with a desire to annex, neither Clarkdale nor Cottonwood shall be in violation of this agreement by proceeding with such annexation.
4. Exhibit C delineates the potential future boundaries of Clarkdale and Cottonwood at the southern end of Clarkdale and the southwest end of Cottonwood. Clarkdale and Cottonwood agree to respect potential future boundaries of each other as shown on Exhibit C. Clarkdale shall not seek to annex any portion of the lands on the east side of the line described in Exhibit C. Cottonwood shall not seek to annex any portion of the lands on the west side of the line described in Exhibit C.
5. Both parties recognize that A.R.S. Section §9-471(C) provides in part:

“If two or more cities or towns show the court that they have demonstrated an active interest in annexing any or all the area proposed for annexation, the court shall consider any oral or written agreements or understandings between or among the cities or towns in making its determination pursuant to this subsection.”

Both parties agree that Clarkdale and Cottonwood have demonstrated an active interest in potential future annexation of the real properties described in Exhibits A and C. Additionally, the parties agree that any mediator or court reviewing this document for enforcement purposes shall consider this Agreement as provided in ARS §9-471(C) as set forth in the paragraph above.

6. Clarkdale and Cottonwood recognize that annexations may arise in the future that may be inconsistent with the terms contained in this agreement. In such cases, this agreement is amendable by mutual written consent of both parties. Such amendment shall not invalidate the remaining portions of this agreement.
7. 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:

Town Clerk
Town of Clarkdale
39 N. 9th Street
P.O. Box 308
Clarkdale, AZ 86324

With a Copy to:

Town Manager
Town of Clarkdale
39 N. 9th Street
P.O. Box 308
Clarkdale, AZ 86324

To Cottonwood:

City Clerk
City of Cottonwood
827 North Main Street
Cottonwood, AZ 86324

With a Copy to:

City Manager
City of Cottonwood
827 North Main Street
Cottonwood, AZ 86324

8. Cottonwood shall indemnify and hold Clarkdale harmless from any and all claims for damages made by third parties arising from or related to Cottonwood's actions under 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.

Clarkdale shall indemnify and hold Cottonwood harmless from any and all claims for damages made by third parties arising from or related to Clarkdale's actions under 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. Parties acknowledge that the terms of this Agreement are reasonable and that a breach by one of the parties will cause the party not in breach irreparable injury and damage which cannot be fully or adequately compensated for solely by damages at law. The party in breach therefore agrees that the party not in breach shall be entitled to injunctive or other equitable relief for a breach of this Agreement in addition to any other damages or

remedies available at law. The party in breach agrees that in the event of any breach by the said party, the party not in breach shall further be entitled to damages, reasonable attorneys' fees, and all other costs and expenses incurred in connection with the enforcement of this Agreement, in addition to any other rights and remedies which the party not in breach may have at law or in equity. The party in breach also agrees that the time provisions contained herein shall be extended by the length of time during which said party is in breach of said provisions.

11. All books, accounts, reports, files and other records relating to this Agreement shall be subject to inspection and audit by Cottonwood and Clarkdale for five years after completion of the Agreement as provided in A.R.S. §35-214.
12. This Agreement shall be filed with the Secretary of State or the County Recorder as provided in A.R.S. §11-952.
13. This Agreement may be cancelled pursuant to the provisions of A.R.S. §38-511 in the event of any conflict of interest as described in said statute.
14. This Agreement is the result of negotiations by and between the parties. Therefore, any ambiguity in this Agreement is not to be construed against either party. In accordance with A.R.S. §11-952(D), this agreement has been submitted to each party's legal counsel.
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.
16. If a dispute is not resolved timely by negotiation or mediation, then to avoid irreparable injury to a party, the provisions of this paragraph shall apply.
17. This Agreement shall be authorized by a formal resolution of Cottonwood, in the form as set forth in Exhibit D hereto, and of Clarkdale, in form as set forth in Exhibit E hereto.

PASSED, APPROVED AND ADOPTED by the Mayor and Council of the City of Cottonwood on the 10th day of November, 2009.

CITY OF COTTONWOOD

Diane Joens, Mayor

ATTEST:

Marianne Jimenez, City Clerk

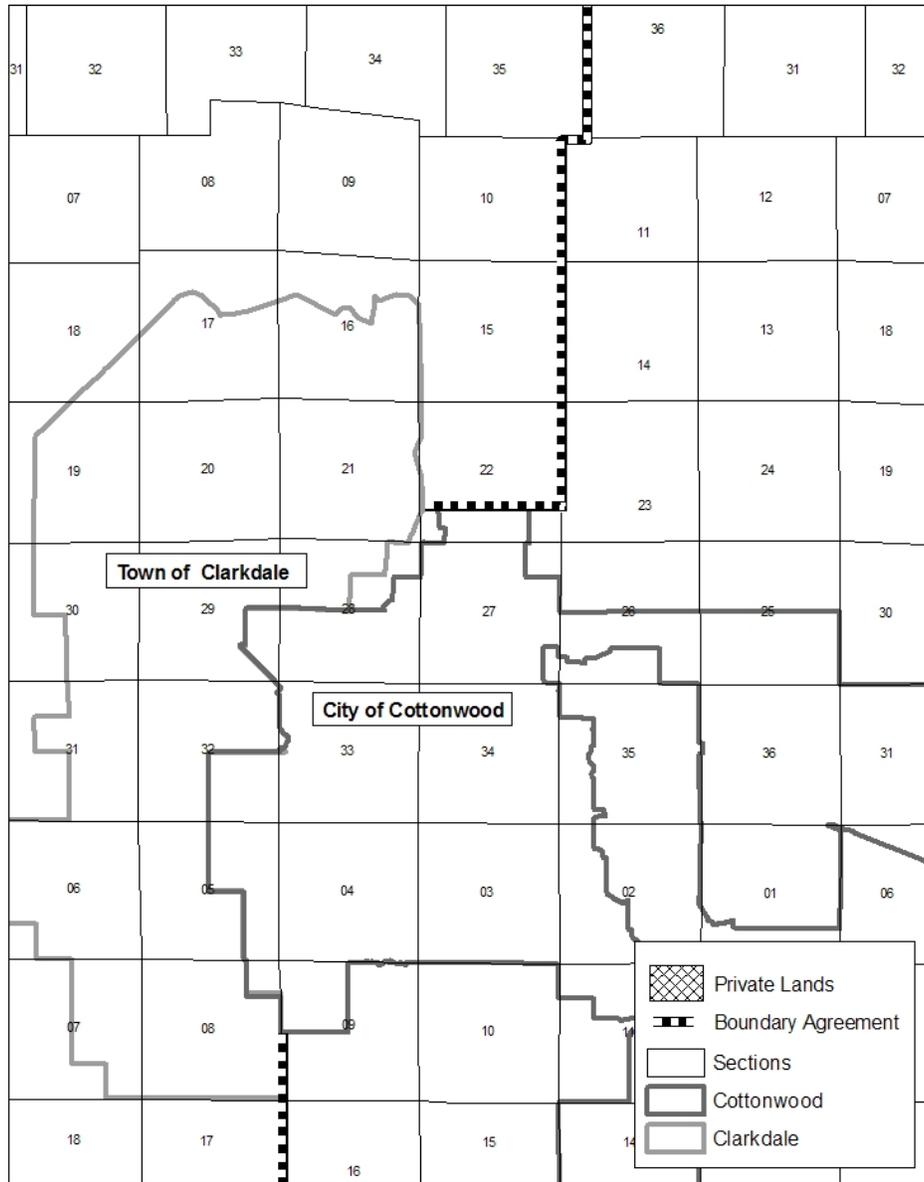
PASSED, APPROVED AND ADOPTED by the Mayor and Council of the Town of Clarkdale on the 10th day of November, 2009.

TOWN OF CLARKDALE

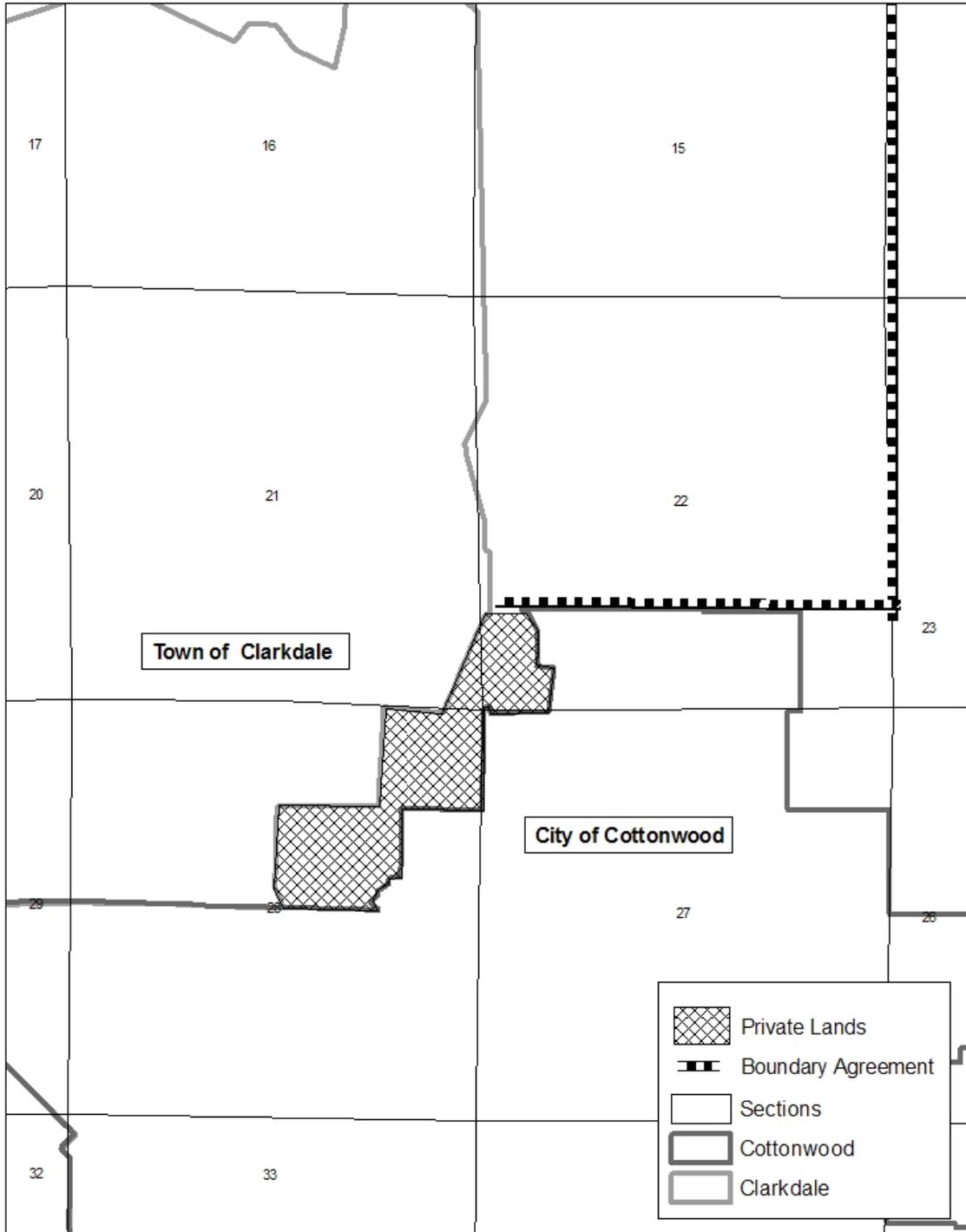
Doug Von Gausig, Mayor

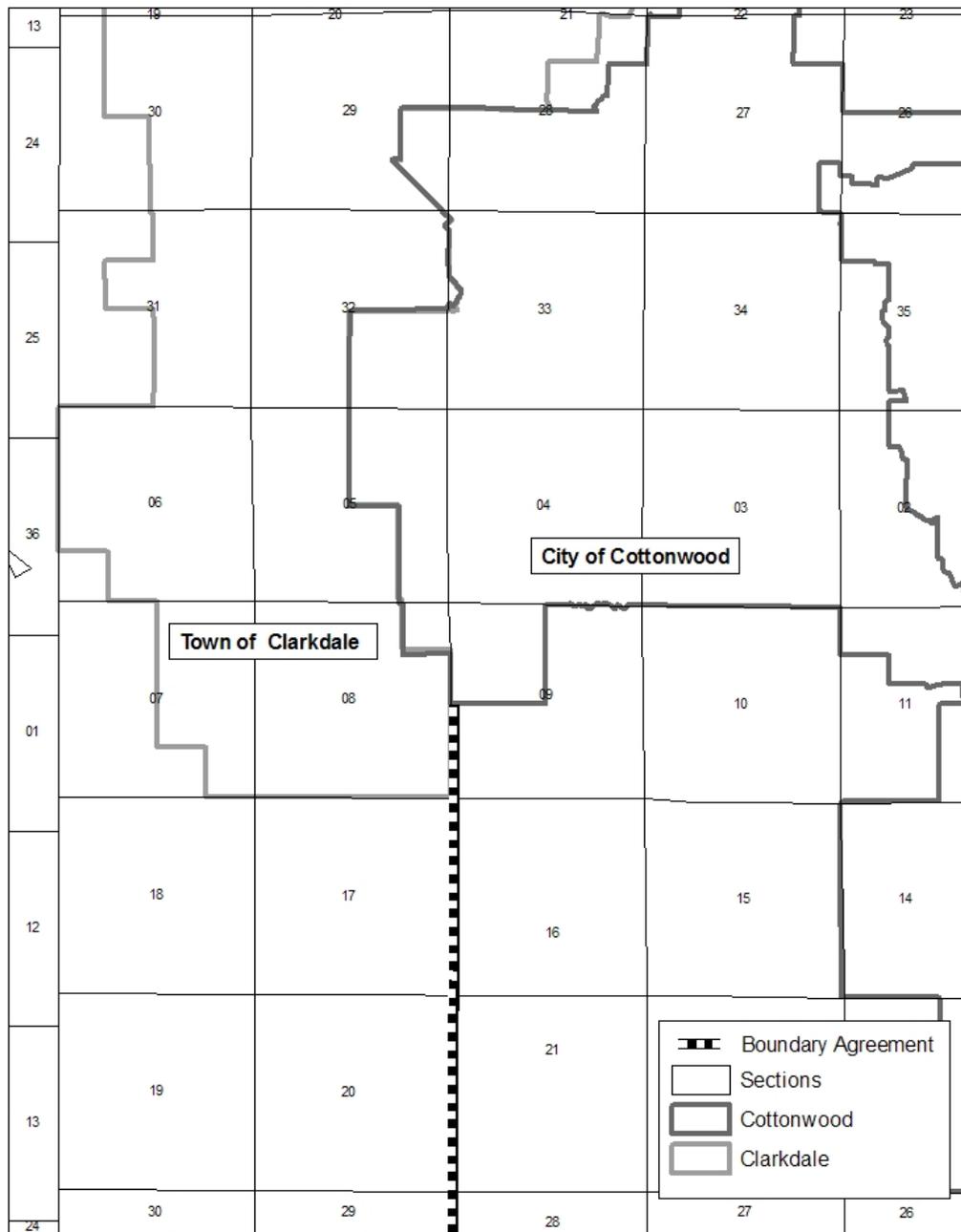
ATTEST:

Kathy Bainbridge, Town Clerk



Boundary Agreement Description: A line that is even with the northern most border of the Dead Horse Ranch State Park in the City of Cottonwood, and extending from the Clarkdale Town limits on the west side of Section 22 to the western boundary of Section 23; then north along the section line that intersects with Section 35; then east along the southern boundary of Section 35; then north in perpetuity on the section line between Sections 35 and 36.





Boundary Agreement Description: A line that begins at the southernmost point where Clarkdale and Cottonwood's borders meet in Section 9 and extending south in perpetuity.

EXHIBIT "D"

RESOLUTION NO. _____

A RESOLUTION OF THE MAYOR AND COUNCIL OF THE CITY OF COTTONWOOD, YAVAPAI COUNTY, ARIZONA, AUTHORIZING THE CITY OF COTTONWOOD TO ENTER INTO A INTERGOVERNMENTAL AGREEMENT RELATING TO THE MUNICIPAL BOUNDARIES BETWEEN THE CITY OF COTTONWOOD, ARIZONA, AND THE TOWN OF CLARKDALE, ARIZONA

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, the Cottonwood City Council and the Clarkdale Town Council have individually expressed a desire to work together on a formal Boundary Agreement which would define future annexation areas to the north and south of both communities; and,

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF COTTONWOOD AS FOLLOWS:

Section 1. THAT, the City of Cottonwood, hereby approves the Intergovernmental Agreement Related to the Municipal Boundaries between the Town of Clarkdale and the City of Cottonwood, attached hereto as Exhibit A.

Section 2. THAT, the Mayor and Staff are hereby authorized to execute the attached Intergovernmental Agreement Related to the Municipal Boundaries between the Town of Clarkdale and the City of Cottonwood and to take any and all steps deemed necessary to accomplish the above.

PASSED, APPROVED AND ADOPTED by the Mayor and Council of the City of Cottonwood THIS _____ DAY OF _____, 2009.

APPROVED:

ATTEST:

Diane Joens, Mayor

Marianne Jimenez, City Clerk

EXHIBIT "E"

RESOLUTION NO. _____

A RESOLUTION OF THE MAYOR AND COUNCIL OF THE TOWN OF CLARKDALE, YAVAPAI COUNTY, ARIZONA, AUTHORIZING THE TOWN OF CLARKDALE TO ENTER INTO A INTERGOVERNMENTAL AGREEMENT RELATING TO THE MUNICIPAL BOUNDARIES BETWEEN THE CITY OF COTTONWOOD, ARIZONA, AND THE TOWN OF CLARKDALE, ARIZONA

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, the Cottonwood City Council and the Clarkdale Town Council have individually expressed a desire to work together on a formal Boundary Agreement which would define future annexation areas to the north and south of both communities; and,

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE TOWN OF CLARKDALE AS FOLLOWS:

Section 1. THAT, the Town of Clarkdale, hereby approves the Intergovernmental Agreement Related to the Municipal Boundaries between the Town of Clarkdale and the City of Cottonwood, attached hereto as Exhibit A.

Section 2. THAT, the Mayor and Staff are hereby authorized to execute the attached Intergovernmental Agreement Related to the Municipal Boundaries between the Town of Clarkdale and the City of Cottonwood and to take any and all steps deemed necessary to accomplish the above.

PASSED, APPROVED AND ADOPTED by the Mayor and Council of the Town of Clarkdale THIS _____ DAY OF _____, 2009.

APPROVED:

ATTEST:

Doug Von Gausig, Mayor

Kathy Bainbridge, Town Clerk