

RESOLUTION NO. 2231

A RESOLUTION OF THE MAYOR AND COMMON COUNCIL OF THE TOWN OF PAYSON, ARIZONA, APPROVING AND AUTHORIZING THE MAYOR TO EXECUTE AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE TOWN OF PAYSON AND THE TOWN OF STAR VALLEY REGARDING THE DEVELOPMENT AND USE OF WATER RESOURCES.

WHEREAS, the Town of Payson and the Town of Star Valley desire to manage and maintain their respective water resources in a long-term state of safe yield; and

WHEREAS, the Town of Payson and the Town of Star Valley share a mutual interest in sustaining the availability of water resources for their respective current and future residents; and

WHEREAS, collaboration between the Town of Payson and the Town of Star Valley in regard to procurement of new water supplies will mutually benefit both entities,

NOW, THEREFORE, THE MAYOR AND COMMON COUNCIL OF THE TOWN OF PAYSON, ARIZONA, DO HEREBY RESOLVE AS FOLLOWS:

Section 1. That the Intergovernmental Agreement Between the Town of Payson, Arizona and the Town of Star Valley, Arizona Regarding the Development and Use of Water Resources, attached hereto as Exhibit "A" and incorporated herein as though set forth in full at this point, be and is hereby approved in substantially the form as set forth in said Exhibit "A".

Section 2. That F. Robert Edwards, Mayor of the Town of Payson, be and is hereby authorized to execute such Intergovernmental Agreement in substantially the form attached.

Section 3. That the Town of Payson be and hereby is authorized to take such other and further actions as are necessary or appropriate to carrying out the purposes of such Intergovernmental Agreement.

PASSED AND ADOPTED BY THE MAYOR AND COMMON COUNCIL OF THE TOWN OF PAYSON, ARIZONA, this ____ day of _____, 2006, by the following vote:

AYES ____ NOES ____ ABSTENTIONS ____ ABSENT ____

F. Robert Edwards, Mayor

ATTEST:

APPROVED AS TO FORM:

Silvia Smith, Town Clerk

Samuel I. Streichman, Town Attorney

**INTERGOVERNMENTAL AGREEMENT
BETWEEN
THE TOWN OF PAYSON, ARIZONA
AND
THE TOWN OF STAR VALLEY, ARIZONA
REGARDING
THE DEVELOPMENT AND USE
OF WATER RESOURCES**

THIS INTERGOVERNMENTAL AGREEMENT ("IGA") is made and entered into effective the ____ day of _____, 2006, by and between the TOWN OF PAYSON, an Arizona municipal corporation, hereinafter referred to as "Payson", and the TOWN OF STAR VALLEY, an Arizona municipal corporation, hereinafter referred to as "Star Valley," collectively, the "Parties."

RECITALS

- A. Star Valley and Payson both currently rely on local groundwater resources.
- B. Star Valley and Payson desire to manage and maintain their respective water resources in a long-term state of Safe Yield.
- C. Payson has made an estimate of the long-term Safe Yield of its current groundwater supplies.
- D. Payson has commissioned a study of the long-term Safe Yield of the groundwater resources available within Star Valley so that an estimate of the Safe Yield of the groundwater resources within Star Valley will be known.
- E. Star Valley and Payson share a mutual interest in the long-term availability of water resources for their respective current and future residents.
- F. Payson has developed wells within Star Valley consisting of the PW2 Well and the Tower Well ("the Wells").
- G. Groundwater levels within both Star Valley and Payson are highly variable over time.
- H. The collaboration of Star Valley and Payson in regard to procurement of new water supplies will mutually benefit both entities.

NOW, THEREFORE, the Parties hereby agree as follows:

- 1. Intergovernmental Agreement. The Parties are empowered to enter into this IGA by the provisions of A.R.S. § 11-951, *et seq.*
- 2. Limitation on Withdrawal of Groundwater. Star Valley and Payson each agree to not withdraw groundwater from Star Valley in an amount in excess of the Safe Yield of groundwater available to Star Valley as defined by the groundwater sustainability/safe yield study commissioned by Payson.
- 3. The Safe Yield Study. Payson has commissioned a groundwater sustainability/safe yield study of the availability of water within Star Valley (the "Study"). The Parties agree to abide by the results of that study. So long as there is no negative effect as defined in

Section 5 herein, Star Valley will not challenge Payson's right to pump groundwater from the Wells as provided for in this IGA.

4. Limited Use of the Wells. Payson will not operate the Wells until such time as the Study is completed and a final report is submitted to Star Valley and Payson. Notwithstanding the foregoing, the provisions of this Section 4 shall not apply to routine or required maintenance of the Tower Well, which will be pumped for such purposes prior to the completion of the Study, or to monitoring activities at the PW2 Well.
5. Withdrawal from Capture Area; Negative Effect. Star Valley agrees to not intentionally withdraw groundwater from within the Wells' capture area and agrees to support, as does Payson, the efficient and responsible beneficial use of groundwater wherever possible. Payson agrees that it does not intend to negatively affect Star Valley as a result of Payson's pumping from the Wells. For purposes of this Section 5, the Parties agree that the phrase "negative effect" shall mean a significant decrease of an aquifer's yield to below that which is necessary to maintain its beneficial use.
 - A. Determination of Negative Effect. The Parties agree to form a Joint Monitoring Committee (the "Committee"). The Committee shall consist of three (3) appointees from each of the Parties (for a total of six (6) Committee people). At least one appointee from each of the Parties shall represent a water provider. Each of the appointees shall meet the requirements for committee membership of the jurisdiction appointing such person. The Committee shall meet from time to time, but no less than every six (6) months and shall at least annually report to the Town Councils for each of the Parties (a) an assessment of whether any negative effects have resulted from pumping of the Wells, and (B) any recommended mitigation strategies if negative effects are found to exist. The Committee shall also meet at any time when there is an indication of a substantial negative effect on any well in the vicinity of the Wells and promptly report to the Town Councils.
6. Future Collaboration. Star Valley and Payson agree to cooperate in future efforts to secure additional water resources that may be used for each or both. Such cooperation shall include, but not be limited to, efforts to obtain deliveries of surface water from C. C. Cragin Reservoir (Blue Ridge Reservoir) in furtherance of the 2004 Arizona Water Rights Settlement Act and efforts to obtain groundwater from public lands.
7. Cancellation. This Agreement is subject to the provisions of A.R.S. § 38-511, the terms of which are incorporated herein by reference. Said statute provides, among other things, that if any person significantly involved in initiating, negotiating, securing, drafting, or creating this Agreement is an employee or agent of any other Party to the contract at any time while this Agreement or any extension hereof is in effect, this Agreement may be canceled.
8. Dispute Resolution. This Agreement shall be governed and construed in accordance with the internal laws of the State of Arizona. Neither Party shall be entitled to recover from

the other Party any of its attorneys' fees, costs, or expert witness fees incurred in any dispute, controversy, claim, or cause of action, but each Party shall bear its own attorneys' fees without contribution from the other Party, whether the same is resolved through arbitration, litigation in a court, or otherwise.

9. Construction of Agreement. This Agreement shall be construed and interpreted according to its plain meaning, and no presumption shall be deemed to apply in favor of or against the party drafting this Agreement. The Parties acknowledge and agree that each has had the opportunity to seek and utilize legal counsel in the drafting of, review of, and entry into this Agreement.
10. Entire Agreement. This IGA constitutes the entire agreement between the Parties hereto pertaining to the subject matter contained in this IGA. All prior and contemporaneous agreements, representations, and understandings of the Parties, whether oral or written, are superseded by and merged into this IGA. No supplement, modification, or amendment of this IGA shall be binding unless in writing and executed by the Parties. The submission of any unexecuted copy of this IGA shall not constitute an offer to be legally bound by the provisions of the document submitted; and no Party shall be bound by this IGA until it is executed and delivered by both Parties.
11. Term. This IGA will commence on the day and year first above written and shall terminate on the fifth anniversary of that date. In addition, either Party may terminate this IGA upon the giving of thirty (30) days' written notice by either Party to the other of its intention to terminate this IGA. This IGA may also be terminated at any time without notice by mutual agreement.

EXECUTED the date first above written.

TOWN OF STAR VALLEY,
an Arizona municipal corporation

TOWN OF PAYSON,
an Arizona municipal corporation

By: _____
Chuck Heron, Mayor

By: _____
F. Robert Edwards, Mayor

Pursuant to A.R.S. § 11-952(D), the foregoing Intergovernmental Agreement has been reviewed by the undersigned attorney for the Town of Star Valley, who has determined that the Agreement is in proper form and is within the powers and authority granted under the laws of the State to the Town.

Timothy W. Grier, Town Attorney
Town of Star Valley

Pursuant to A.R.S. § 11-952(D), the foregoing Intergovernmental Agreement has been reviewed by the undersigned attorney for the Town of Payson, who has determined that the Agreement is in proper form and is within the powers and authority granted under the laws of the State to the Town.

Samuel I. Streichman, Town Attorney
Town of Payson, Arizona

*C:\MyFiles\Star Valley\Agreements & Contracts\IGA re Development & Use of Water Resources.wpd
SIS: drs December 7, 2006 (11:34AM)*