



GILA COUNTY BOARD OF SUPERVISORS

Gila County, AZ

AG

After recording, please deliver to: Marian Sheppard, BOS

INTERGOVERNMENTAL AGREEMENT

CITY OF GLOBE AND THE CANYON DOMESTIC WATER IMPROVEMENT DISTRICT AND THE COUNTY OF GILA

THIS AGREEMENT is made and entered into effective the 16th day of April, 2002, by and between the **CITY OF GLOBE**, an Arizona municipal corporation, hereinafter referred to as "CITY", and **THE CANYON DOMESTIC WATER IMPROVEMENT DISTRICT**, hereinafter referred to as "DISTRICT" and the **COUNTY OF GILA, STATE OF ARIZONA**, hereinafter referred to as "COUNTY".

RECITALS:

The City operates and maintains a water distribution system pursuant to Globe City Code and the applicable laws of the State of Arizona. **The District, having been properly formed by the County in accordance with the provisions of Chapter 6, Title 48, Arizona Revised Statutes, desires to have water delivered to its residents by the City.** The District has obtained certain grant funds to be utilized in the construction of a water distribution and storage system to distribute domestic water to property owners within the boundaries of the District described in Exhibit "A" attached hereto and by reference made a part hereof. The District has no available water source and desires to enter this agreement with the City setting forth the terms and conditions upon which the City will make water available to District residents. Because this agreement provides for the ultimate transfer of the water distribution system of the District to the City after the payment of all debt of the District which was incurred in the construction of the distribution system and because, pursuant to various provisions of Chapter 6 of Title 48, the County has some oversight authority through its Board of Supervisors over the District Board

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and is taking an active part in the construction of the project, the County is also a party to this Agreement. The District and County have authority to enter into this agreement in accordance with the provisions of Chapter 6 of Title 48 and A.R.S. § 11-951, et seq., the City has authority to enter into this agreement in accordance with A.R.S. § 9-272 and A.R.S. § 11-951, et seq.

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements contained herein, the City agrees to provide water service to residents of the District under the following terms and conditions:

1. Completion of Construction by District and/or County Utilizing Funds Made Available Through Grants and Revenue Bonds

The District shall construct or cause to be constructed a water distribution and storage system sufficient to deliver water to its current residential users. Said construction shall be performed in a manner acceptable to the City to provide for connection to the City water distribution system at such point or points as the City may designate. All charges, costs and obligations for costs of construction and improvement of the system shall be at the sole expense of the District. The cost to be borne by the District shall include, but not be limited to, all pipelines, water meters, distribution lines, rights-of-way and easements necessary to distribute water to the targeted residential users within the District.

A. Prior to the project being submitted for bid, the District shall provide the City Manager full and complete copies of all construction plans and bid documents and the City shall have thirty (30) days from the delivery of said documents to the City to provide comments and request modifications to same prior to the project being submitted for bid proposals.

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2. Certification of Rights-of-Way

Within one hundred eighty (180) days from the date this agreement is signed by all parties, the District shall provide a certificate by a duly authorized official of the District certifying that the District has obtained and currently holds adequate and sufficient ownership and rights to all rights-of-way, easements, permits, licenses and other authorizations necessary for the District to have uninterrupted right-of-way for the construction, operation and maintenance of the facilities required to distribute water to the anticipated residential users. Said certificate shall be accompanied by an opinion of the attorney for the District certifying the adequacy and legal sufficiency of the rights-of way and easements certified by the District, together with a full and complete map showing all rights-of-way easements obtained by the District.

A. In addition to the certification of legal rights-of-way, the District shall provide to the City written assignment of all ownership and rights to use said rights-of-way and easements in the performance of all provisions of this agreement upon completion of the construction project.

B. The right-of-way map shall clearly show all structures, pipelines, ditches, or other structures located within the rights-of-way and will bear the signature and certification of the District engineer.

3. Compliance With Applicable Rules and Regulations and Grant Funding Agencies Requirement

By execution of this Agreement, the District certifies that it has or will comply with all rules, regulations, obligations and requirements of the County, State and Federal Agencies which may have oversight of this project, including, but not limited to, Gila County

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and the funding agencies who have provided funds for the construction project. The District shall pay and hold the City harmless from any and all obligations incurred by the City as a result of the District's failure to comply with this provision.

4. Obligations of the District Upon Completion of the Project

Upon completion of the construction in accordance with the approved plans and specifications, the District shall provide the City with two (2) full and complete sets of as-built plans showing the location of all rights-of-way, easements, pipelines, pumps, water meters, storage facilities and other structures to be utilized in the distribution of water to the users within the District. Said as-built plans shall be certified by the District engineer. The District shall pay and hold the City harmless from any and all obligations incurred by the City as a result of any inaccurate information contained in said plans submitted by the District.

5. Provisions for Payment of Revenue Bond Indebtedness on Completing of Construction

It is anticipated that the District will incur indebtedness on revenue bonds in the approximate amount of Two Hundred Thousand (\$200,000) Dollars to complete construction of the distribution and storage system. The District shall remain solely responsible for said obligations and shall fully comply with all statutory and agency requirements with regard to the receipt and repayment of the obligation. However, since the City will be billing each qualified user within the District, the City agrees to include within each billing a "debt repayment component" in an amount which is sufficient to pay the principal and interest payments required of the District, with said amount to be agreed upon in writing between the District and the City. Said "debt service component" shall be accounted for in accordance with the provisions of paragraph 9 of this agreement.

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6. Commencement of Water Service - User Agreement Required With Administrative Fee

Upon acceptance of construction of the project by the City and full compliance with the provisions of paragraphs 1 through 4 of this agreement by the District, the City will open water service to District residents. The City shall have no obligation to provide water service to any user within the District until such time as said user has executed and delivered a water subscription agreement in a form acceptable to the City and paid an application fee in the amount of One Hundred (\$100.00) Dollars. Said application fee shall be utilized solely at the discretion of the City to assist in compensating the City for costs incurred in the preparation of the user agreements and the initiation of the billing procedures, including computer software modifications.

A. The application fee referenced in the preceding paragraph shall apply only to those users who have had a water meter installed during the construction of the system and apply for City service within sixty (60) days of completion of the system and acceptance of same by the City. All users who make application for service who have not had a water meter installed or make application after the initial sixty (60) day period shall pay such charges as the City may then be charging out-of-city consumers for water service.

7. Water User Agreement - Minimum Requirements

The water subscription agreements shall provide an opportunity for users within the District to initiate water service on the terms and conditions set forth in the agreement. The agreement shall provide that the user shall timely pay all fees and charges imposed by the City in accordance with the terms of this agreement and Arizona law. The user shall further comply with all provisions of the Globe City Code with regard to the use of said water, the provisions of which will be incorporated into said agreement. The agreement shall further provide that the

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proposed user will comply with the rules and regulations applicable to all users of water distributed by the Globe City Water Department including, but limited to, any and all conservation measures applicable to water users within and without the City generally. The agreement shall provide for termination of the users right to obtain water for violation of any of said provisions.

8. Rate Structure - Modification Procedure

Until such time as the District shall be annexed into the City of Globe, the City will charge the rates generally applicable to out-of-city residents to the users within the District, all of which shall be subject to modification in accordance with the provisions of Arizona State law and Globe City Code. At a minimum, should the City choose to increase out-of-city rates, the City will publish and post notice of hearings in accordance with the Globe City Code providing a minimum of thirty (30) days notice of the meeting at which the rate modification will be discussed and no rate increase shall occur without a thirty (30) day written notice to the District.

9. Debt Service Component To Be Charged Users - Accounting Procedures

The District shall be obligated for the repayment of principal and interest on revenue bonds in accordance with the provisions of Article 6 of Chapter 6, Title 48 of the Arizona Revised Statues. To avoid duplication of billing efforts, the City will include a "debt service component" within each bill to District users. Within thirty (30) days of receipt of said debt service payment said funds shall be deposited into a special account maintained by the City for the purpose of providing payment on the revenue bonds issued by the District. Should the amounts received from the users in accordance with the provisions of this agreement for debt service be insufficient to pay the amount due the funding agency, the District shall be solely

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responsible for the payment of all deficiencies. The City and District will use their best efforts in regard to establishment of the "debt service component" to be included within each billing to try to avoid any such deficiency.

10. Reserve Fund Controlled by District

It is anticipated that the District will establish a reserve fund from the proceeds of the revenue bonds to be utilized for the payment of principal and interest debt and other emergency obligations of the District. One emergency obligation would include the repair and maintenance of the system incurred within the first year of operation. In addition to its obligations to provide the funding agency with an accounting of the reserve fund, the District shall provide the City within thirty (30) days of the end of each quarter an accounting of said reserve fund showing any receipts and disbursements from said fund during the preceding quarter.

11. District Obligation to Take All Action Necessary to Comply With This Agreement and Adopt Rules and Impose Orders Necessary for Compliance

Because the water distribution system is located outside the City of Globe, it is possible that unanticipated occurrences may arise requiring the District Board to take such action as may be necessary to comply with the agreement and force residents to comply with rules and regulations applicable to distribution. The District Board agrees to take such legally authorized action as may be requested by the City to adopt such rules and regulations and impose such orders as may be necessary within its District to provide for the orderly administration of the provisions of this agreement and the distribution of water and rate and fee collection by the City.

12. Repair and Maintenance of the System

The City provides for the maintenance and repair of its water distribution system through its Public Works Department. The District has no such capabilities and desires the City

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to provide for said repair and maintenance. So long as this agreement is in effect, the City agrees to provide such repair and maintenance as it deems necessary to provide for the efficient operation of the system in accordance with City rules and regulations. The cost of such repair and maintenance shall be included as a component of the rates charged the users of water within the District. Said component will provide for funding for maintenance expenses only after several years of operation and will not provide for any unanticipated irregular repairs and maintenance, including catastrophic occurrences, therefore:

A. Should repair and maintenance be required within the first twelve (12) months of operation by the City, the District shall be responsible for the cost of same and shall pay and hold the City harmless from any such obligation and, if required, shall utilize the reserve fund generated for revenue bonds for the payment of said amount. All such costs shall be paid by the District to the City within thirty (30) days of billing.

B. Should an unanticipated catastrophic loss occur such as a loss to water storage facility, the District shall impose such taxes or other obligations on those located within the District in a sufficient amount to pay the cost of said unanticipated repairs.

C. The City and District may agree to increase rates to reimburse the bond retention fund should expenditures be required from same under the provisions of this paragraph 12.

13. Obligations of Globe Conditioned Upon Availability of Water - No Liability to be Incurred

The responsibility of Globe to distribute water in accordance with the provisions of this agreement to the users which have signed a subscription agreement is solely conditioned upon the City of Globe having sufficient water supply to provide for all of its users. In the case of any disruption of service for any reason, the City shall incur no responsibility or liability with

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regard to any losses or claims arising from such unanticipated event.

14. Distribution of System to Globe on Payment of Construction Indebtedness

Upon the payment of all amounts due for the revenue bond indebtedness utilized in the initial construction of the system, the City, at its sole option, may require the distribution of the property of the District to the City. Upon written request by the City, after payment of the revenue bond debt, the District and the County agree to execute and deliver any and all documents necessary to convey full and complete title to all District property utilized in the distribution of water including, but not limited to, all pipelines, water meters, storage facilities, rights-of-way and easements and said conveyance shall be at no cost to the City and shall be considered additional compensation earned by the City for compliance with the provisions of this agreement.

A. The district agrees not to incur any debt after the initial construction bond indebtedness without the express written consent of the City of Globe and the County.

15. Termination Upon Default

This Intergovernmental Agreement may be terminated only upon default in its provisions by any party. Should any party determine that another party has breached the provisions of this Agreement, said party shall provide the breaching party with written notice of the terms of the Agreement which have been violated, together with notice that said party intends to declare default if said violation of the Agreement has not been cured within 120 days of the date of said notice. Should said violation not be cured within the time period allowed and no extension has been granted, in writing, the noticing party may declare the Agreement terminated or take such other action as may be authorized by law to enforce the provisions of this Agreement.

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16. Notices

All notices required pursuant to the provisions of this agreement shall be deemed delivered within five (5) days of depositing same in the United States mail directed to the parties as follows:

Canyon Water Improvement District
Attn: President

County of Gila
Chairman of the Board of Supervisors
1400 East Ash Street
Globe, Arizona 85501

City of Globe
Attn: City Manager
150 North Pine Street
Globe, Arizona 85501

17. Automatic Termination for Failure to Timely Complete Construction

Should the District fail to complete construction of the Distribution and Storage System within twenty-four (24) months of the date this Agreement is approved by the Mayor and Council of the City of Globe, this Agreement shall terminate and be of no further force and effect unless said time period is extended in writing by the Mayor and Council of the City.

18. This agreement shall bind the successors and assigns of the parties hereto.

Attest:

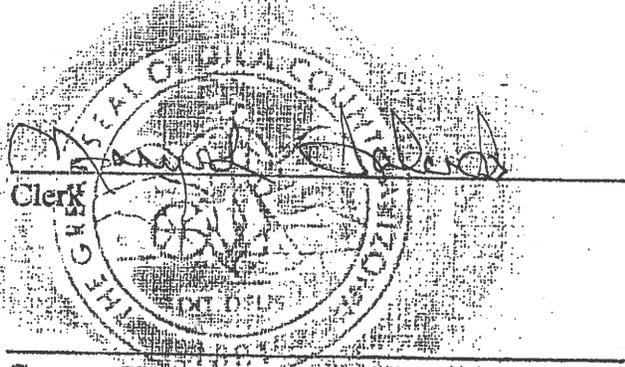
for City Clerk

CITY OF GLOBE

By:
Mayor

THE CANYON DOMESTIC WATER
IMPROVEMENT DISTRICT

By:
President



County Clerk

GILA COUNTY

By:
Chairman, Board of Supervisors

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COUNTY ATTORNEY

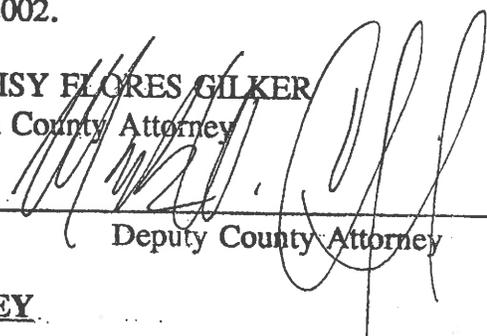
INTERGOVERNMENTAL AGREEMENT

DETERMINATION

Pursuant to A.R.S. 11-951, et seq., the foregoing intergovernmental agreement with the City of Globe has been submitted to the Gila County Attorney as attorney for the County of Gila and the Canyon Domestic Water Improvement District. The undersigned County Attorney or Assistant has determined that said agreement is in proper form and is within the powers and authority granted under the laws of the State of Arizona to the County of Gila.

DATED this 9th day of April, 2002.

DAISY FLORES GILKER
Gila County Attorney

By 
Deputy County Attorney

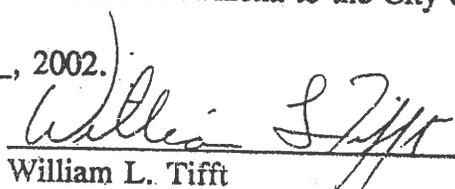
CITY ATTORNEY

INTERGOVERNMENTAL AGREEMENT

DETERMINATION

Pursuant to A.R.S. 11-951, et seq., the foregoing intergovernmental agreement with the County of Gila has been submitted to the City Attorney as attorney for the City of Globe. The undersigned City Attorney has determined that said agreement is in proper form and is within the powers and authority granted under the laws of the State of Arizona to the City of Globe.

DATED this 25th day of March, 2002.


William L. Tift
Globe City Attorney



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Gila County, AZ

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DOCKET 518 862

Formal Order Establishing
Canyon Improvement District

boundary of the district. The district shall include all property within the above stated boundaries in IceHouse Canyon and Kellner Canyon, as set out in Exhibits 1-9 which are attached hereto and by reference made a part hereof.

IT IS FURTHER ORDERED AND DECLARED that said CANYON IMPROVEMENT DISTRICT shall be organized solely for those purposes enumerated in the petitions heretofore submitted on September 15, 1980, to establish said Improvement District, and for such other purposes as authorized by Statutes. Copies of said petitions are a permanent part of the public record maintained in the Office of the Gila County Board of Supervisors and are, by reference thereto, made a part hereof.

DATED AT GLOBE, ARIZONA, this 27th day of October, 1980.

BOARD OF SUPERVISORS OF
GILA COUNTY, ARIZONA



Lynn Sheppard

Chairman

Abogh B. Finjillo

Vice Chairman

Robert P. Basillas

Member

ATTEST:

Rose Marie Phillips
Clerk

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DISCLOSURE OF DUAL REPRESENTATION

In approving the preceding Intergovernmental Agreement between GILA COUNTY, CITY OF GLOBE, and CANYON DOMESTIC WATER IMPROVEMENT DISTRICT, Gila County Attorney Daisy Flores Gilker has represented GILA COUNTY and CANYON DOMESTIC WATER IMPROVEMENT DISTRICT.

Arizona Ethical Rule 1.7 requires that certain steps be taken before an attorney can represent one client that is directly adverse to another client or representation of one client may be materially limited by the attorney's responsibilities to another client.

In approving the IGA on behalf of GILA COUNTY and CANYON DOMESTIC WATER IMPROVEMENT DISTRICT, Daisy Flores Gilker has determined that representation of one client is not directly adverse to the other, nor will representation of one client be materially limited by his responsibilities to the other. However, it is possible in the future that if any dispute arises from this IGA, and GILA COUNTY and CANYON DOMESTIC WATER IMPROVEMENT DISTRICT are adverse to each other, Daisy Flores Gilker may have to invoke the requirements of Ethical Rule 1.7. Rule 1.7 requires the attorney to reasonably believe the dual representation will not be adversely affected, and each client must consent after consultation.



Disclosure of Dual Representation
Gila, Globe, Canyon Water
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Therefore, the undersigned acknowledges this dual representation and acknowledges that if the Rule's conflict of interest occurs, Daisy Flores Gilker may have to withdraw her representation of one or both clients.

4-16-02
Date


Chairman of the Gila County Board of Supervisors

4-16-02
Date


Chairman of Canyon Domestic Water
Improvement District