



Sherry R. Scott
City Attorney

3939 N. Drinkwater Blvd.
Scottsdale, AZ 85251

PHONE 480-312-2405
FAX 480-312-2548
WEB www.ScottsdaleAZ.gov

MEMORANDUM

TO: Ben Lane, City Clerk
FROM: Eric C. Anderson, Sr. Asst. City Attorney
CC: Brian Biesemeyer, Rommel Cordova
DATE: September 8, 2023
RE: Resolution No. 12892/Contract No. 2023-141-COS

City Clerk's Office:

For Item 12A (Temporary Water Supply for RVF) on the City Council Agenda from September 5, 2023, the City Council adopted Resolution No. 12892, but the motion included two modifications. The first modification was specific to the language of Contract No. 2023-141-COS and directed that the second sentence of paragraph 14 be stricken from the contract. The language to be stricken is as follows: "The Agreement may be administratively extended for a period of one additional (1) year upon mutual agreement of the City Manager and the Chairman of the District Board should the District be legally authorized to exist beyond December 31, 2025." Attached you will find two separate pages, one showing the language in strikethrough and one showing the language deleted altogether as directed.

With respect to the second directive, City Council directed that City staff implement a traffic mitigation plan pursuant to the terms of the agreement. As clarified by the City Attorney at the meeting, existing language in the contract (Paragraph 8) provides for the District to comply with rules and policies of the Water Resources Department regarding use of the filling station and the traffic mitigation plan would be accomplished through that mechanism. Therefore, no changes are necessary to the language of the contract, but we have revised Resolution No. 12892 to add a new section to reflect the Council direction stated in the motion: "The Water Resources Director is further directed in accordance with the provisions of paragraph 8 of IGA No. 2023-141-COS to require the District to provide a traffic mitigation plan subject to the Director's approval for use of the Pima Road Filling Station by the District and its members and contractors."

Let me know if any further clarification is needed.


Eric C. Anderson

11.5 The indemnity obligations under Section 11.3 shall survive termination of this Agreement.

12. **Entire Agreement; Modification.** This Agreement constitutes the full and complete understanding and agreement of the parties, it supersedes and replaces any and all previous representations, understandings, and agreements, written or oral, relating to its subject matter. There shall be no oral alteration or modification of this Agreement; this Agreement and its terms may not be modified or changed except in writing signed by both parties and approved by the governing bodies of the parties.
13. **Effective Date.** The Effective Date of this Agreement shall be when all of the following have occurred: 1) the Agreement has been approved by the governing bodies of the parties and 2) the Agreement has been executed by an authorized representative of each Party.
14. **Term.** The term of this Agreement shall terminate on December 31, 2025 unless sooner terminated in accordance with the terms of this Agreement or as provided by law. ~~The Agreement may be administratively extended for a period of one additional (1) year upon mutual agreement of the City Manager and the Chairman of the District Board should the District be legally authorized to exist beyond December 31, 2025.~~
15. **Conflicts of Interest.** Each party acknowledges that the other has the statutory right for three (3) years to cancel this Agreement if, while this Agreement or any extension is in effect, any person significantly involved in negotiating, drafting or securing this Agreement on behalf of any party is (i) an employee or agent of the other party in any capacity, or (ii) a consultant to the other party with respect to the subject matter or this Agreement, as provided pursuant to A.R.S. § 38-511.
16. **Contract Administrator.** The Contract Administrator for the City shall be the Water Resources Director, or his designee or successor. The Contract Administrator for the District shall be Kent Thomas.
17. **E-Verify.** The Parties agree to, the extent applicable, comply with the E-VERIFY Program and the provisions of A.R.S. §41-4401 as follows.

17.1 *Warranty of Compliance.* Under the provisions of A.R.S. §41-4401, both Parties warrant to the other that each Party will comply with all Federal Immigration laws and regulations that relate to their employees and that each now complies with the E-Verify Program under A.R.S. §23-214(A).

17.2 *Breach of Warranty.* A breach of this warranty will be considered a material breach of this Agreement and may subject the breaching party to penalties up to and including termination of this Agreement.

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17.2 *Breach of Warranty.* A breach of this warranty will be considered a material breach of this Agreement and may subject the breaching party to penalties up to and including termination of this Agreement.

RESOLUTION NO. 12892

A RESOLUTION OF THE COUNCIL OF THE CITY OF SCOTTSDALE, MARICOPA COUNTY, ARIZONA AUTHORIZING INTERGOVERNMENTAL AGREEMENT NO. 2023-141-COS WITH RIO VERDE FOOTHILLS STANDPIPE DISTRICT FOR THE TREATMENT AND PROVISION OF POTABLE WATER AT A CITY STANDPIPE FOR DELIVERY TO RESIDENTS IN THE RIO VERDE FOOTHILLS AREA AND DETERMINATION THAT PROVISION OF WATER TO THE DISTRICT FOLLOWING DISTRICT'S PROVISION OF ADDITIONAL RAW WATER SUPPLY TO THE CITY IS CONSISTENT WITH THE CITY'S DROUGHT MANAGEMENT PLAN

WHEREAS, the City of Scottsdale Water Resources Department obtains raw water from the Central Arizona Project ("CAP") Canal; and

WHEREAS, on April 6, 2021, Council adopted Resolution No. 12120 and Ordinance No. 4496 which, among other things, adopted the City's updated Drought Management Plan ("DMP") as required under state law; and

WHEREAS, the DMP provides that in Stage 1 of a shortage of Colorado River ("CAP") supply, the City would restrict water hauling from the Pima Road Filling Station to use within the City of Scottsdale; and

WHEREAS, on August 16, 2021, the City entered Stage 1 of the DMP as a result of declared shortages of CAP supply and the City notified water hauling customers that water would not be made available for purchase at the Pima Road Filling Station unless the customer could substantiate that the water was for use within the City; and

WHEREAS, the Arizona Legislature adopted S.B. 1432 (2023) as an emergency measure adding Arizona Revised Statutes Section 9-500.40 to provide for formation of a "standpipe district" under certain terms and conditions;

WHEREAS, a Rio Verde Foothills Standpipe District ("the District") has been formed in accordance therewith and the District seeks the City's assistance to provide potable water to members of the District; and

WHEREAS, Article 1, Section 3-1 of the City Charter of the City of Scottsdale authorizes the City to enter into intergovernmental agreements with various public agencies; and

WHEREAS, the Council finds that entering into an Intergovernmental Agreement with a newly formed Standpipe District for the Rio Verde Foothills area for treatment of and delivery of a water supply obtained in addition to the City's existing water supply portfolio is consistent with the City's drought management principles.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Scottsdale, Maricopa County, Arizona, as follows:

Section 1. The Mayor of the City of Scottsdale is authorized and directed to execute Intergovernmental Agreement No. 2023-141-COS with the newly formed Rio Verde Foothills Standpipe District.

Section 2. The Council determines that execution of an Agreement with the District is consistent with the City's Drought Management Plan.

Section 3. The Water Resources Director is further directed in accordance with the provisions of paragraph 8 of IGA No. 2023-141-COS to require the District to provide a traffic mitigation plan subject to the Director's approval for use of the Pima Road Filling Station by the District and its members and contractors;

Section 4. The City Manager or designee and the City Attorney or designee are hereby authorized to take such further actions and execute such documents as may be necessary to effectuate the purposes of this Resolution.

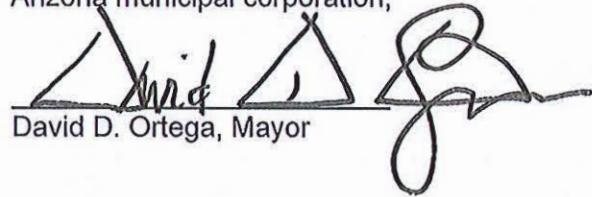
PASSED AND ADOPTED by the City Council of the City of Scottsdale this 5 day of September, 2023.

ATTEST:



Ben Lane, City Clerk

CITY OF SCOTTSDALE, an
Arizona municipal corporation,


David D. Ortega, Mayor

APPROVED AS TO FORM:

OFFICE OF THE CITY ATTORNEY



Sherry R. Scott, City Attorney

By: Eric C. Anderson, Sr. Asst. City Attorney

CITY COUNCIL REPORT



Meeting Date: **September 5, 2023**
 General Plan Element: **Public Services and Facilities**
 General Plan Goal(s): **Partner with other jurisdictions and agencies to achieve the greatest efficiency in city service delivery.**

ACTION

IGA Between City of Scottsdale and the Rio Verde Foothills Standpipe District: Adopt Resolution No. 12892 to authorize an intergovernmental agreement with the Rio Verde Foothills Standpipe District (District) to provide a temporary water supply for District.

BACKGROUND

Recent legislation from the State of Arizona authorized the formation of a Standpipe District as a government entity designated to provide water service outside the service area of a town or city. The Rio Verde Foothills Standpipe District (District) has been formed to represent the Rio Verde Foothills Area and has approached the City to negotiate an intergovernmental agreement (IGA). The purpose of this action is to authorize an IGA with the duly formed and constituted Rio Verde Foothills Standpipe District as set forth in A.R.S. § 9-500.40. The District will acquire additional water supply and provide it to the City and the City will treat that water to potable standards and sell such potable water to the Standpipe District in order to enable the Standpipe District to provide water deliveries to residents living in the Rio Verde Foothills Area.

Historically, the City's Water Resources division (Scottsdale Water) has made potable water for purchase by water haulers on a limited basis including some water haulers that delivered water outside of the city's jurisdiction. This offering was made on a limited basis in accordance with available water supply. On April 6, 2021, the Council adopted Resolution No. 12120 and Ordinance No. 4496 which, among other things, adopted the City's updated Drought Management Plan ("DMP") as required under state law. The DMP addresses scenarios where the federal government declares shortages and restrictions on the Colorado River supply through which the City obtains water. The DMP provided that in Stage 1 of a shortage of Colorado River ("CAP") supply, the City would restrict water hauling from the Pima Road Filling Station to uses within the City of Scottsdale. This restriction was based on expected cuts to the City's CAP supply.

On August 16, 2021, the City Manager declared Stage 1 of the DMP as a result of declared shortages of CAP supply. Subsequently, in October 2021, the City notified water hauling customers that water would not be made available for purchase at the Pima Road Filling Station after December 31, 2022 unless the customer could substantiate that the water was for use within the City. Customers were again notified in August 2022 that water hauling to outside of the city would cease on December 31,

unless the customer could substantiate that the water was for use within the City. Customers were again notified in August 2022 that water hauling to outside of the city would cease on December 31, 2022 and then on December 31, 2022, all water hauling accounts for non-Scottsdale residents were closed.

City staff had been working with state and county representatives to facilitate a temporary solution for its Rio Verde Foothills residents whose ability to obtain potable water has been limited. In doing so, the City had discussed parameters under which the City would sell potable water to the County wherein another governmental agency would take any further responsibility for delivery of water to County citizens in the Rio Verde Foothills area. On February 21, 2023, City Council approve the general structure of an intergovernmental agreement (IGA) structure to be negotiated with Maricopa County. Subsequently, Maricopa County refused to negotiate and the State of Arizona passed legislation authorizing a Standpipe District as a government entity authorized to provide water to Rio Verde Foothills residents.

Based on the previous IGA structure and content, this proposed agreement includes the following requirements:

- The IGA will terminate on December 31, 2025.
- The City contracts only with the District; District may contract with a third-party administrator, and or certified commercial water haulers and “self-haulers” to deliver to Rio Verde customers.
- No City responsibility after delivery at Pima Filling Station.
- Contingent on District obtaining raw water from a third-party source.
- District will have single account limited to no more than 100 subaccounts.
- District is limited in serving no more than 750 residences as stipulated in A.R.S. § 9-500.40
- If City’s access to water is reduced, the City may also reduce water delivery to District.
- District to pay City \$1,000 per month plus \$17.96 per 1,000 gallons of potable water delivered.
- The cost will annually escalate as Scottsdale water rates increase.

As noted, the effectiveness of the agreement will be contingent upon the District being able to obtain from a third-party source, a supply of raw water that can be treated to potable water standards by Scottsdale Water for delivery to the District. This supply will need to be water that can be provided to a surface water intake at one of the City’s surface water treatment facilities.

ANALYSIS & ASSESSMENT

This temporary agreement is consistent with the City’s DMP.

RESOURCE IMPACTS

Available funding

The proposed temporary agreement is expected to provide the City with full cost recovery.

Staffing, Workload Impact

The contract administrator, responsible for enforcing all contract provisions, will be the Water Resources Executive Director or designee.

OPTIONS & STAFF RECOMMENDATION

Recommended Approach

Adopt Resolution No. 12892 to authorize an intergovernmental agreement No. 2023-141-COS with the Rio Verde Foothills Standpipe District (District) to provide a temporary water supply for District.

RESPONSIBLE DEPARTMENT(S)

Water Resources Division (Scottsdale Water)

STAFF CONTACTS (S)

Brian K. Biesemeyer, Executive Director, Water Resources

APPROVED BY



Jim Thompson, City Manager

(480) 312-2811

8/24/23
Date

ATTACHMENTS

1. Resolution 12892
2. Intergovernmental Agreement No. 2023-141-COS

ATTACHMENT 1

RESOLUTION NO. 12892

A RESOLUTION OF THE COUNCIL OF THE CITY OF SCOTTSDALE, MARICOPA COUNTY, ARIZONA AUTHORIZING INTERGOVERNMENTAL AGREEMENT NO. 2023-141-COS WITH RIO VERDE FOOTHILLS STANDPIPE DISTRICT FOR THE TREATMENT AND PROVISION OF POTABLE WATER AT A CITY STANDPIPE FOR DELIVERY TO RESIDENTS IN THE RIO VERDE FOOTHILLS AREA AND DETERMINATION THAT PROVISION OF WATER TO THE DISTRICT FOLLOWING DISTRICT'S PROVISION OF ADDITIONAL RAW WATER SUPPLY TO THE CITY IS CONSISTENT WITH THE CITY'S DROUGHT MANAGEMENT PLAN

WHEREAS, the City of Scottsdale Water Resources Department obtains raw water from the Central Arizona Project ("CAP") Canal; and

WHEREAS, on April 6, 2021, Council adopted Resolution No. 12120 and Ordinance No. 4496 which, among other things, adopted the City's updated Drought Management Plan ("DMP") as required under state law; and

WHEREAS, the DMP provides that in Stage 1 of a shortage of Colorado River ("CAP") supply, the City would restrict water hauling from the Pima Road Filling Station to use within the City of Scottsdale; and

WHEREAS, on August 16, 2021, the City entered Stage 1 of the DMP as a result of declared shortages of CAP supply and the City notified water hauling customers that water would not be made available for purchase at the Pima Road Filling Station unless the customer could substantiate that the water was for use within the City; and

WHEREAS, the Arizona Legislature adopted S.B. 1432 (2023) as an emergency measure adding Arizona Revised Statutes Section 9-500.40 to provide for formation of a "standpipe district" under certain terms and conditions;

WHEREAS, a Rio Verde Foothills Standpipe District ("the District") has been formed in accordance therewith and the District seeks the City's assistance to provide potable water to members of the District; and

WHEREAS, Article 1, Section 3-1 of the City Charter of the City of Scottsdale authorizes the City to enter into intergovernmental agreements with various public agencies; and

WHEREAS, the Council finds that entering into an Intergovernmental Agreement with a newly formed Standpipe District for the Rio Verde Foothills area for treatment of and delivery of a water supply obtained in addition to the City's existing water supply portfolio is consistent with the City's drought management principles.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Scottsdale, Maricopa County, Arizona, as follows:

Section 1. The Mayor of the City of Scottsdale is authorized and directed to execute Intergovernmental Agreement No. 2023-141-COS with the newly formed Rio Verde Foothills Standpipe District.

Section 2. The Council determines that execution of an Agreement with the District is consistent with the City's Drought Management Plan

Section 3. The City Manager or designee and the City Attorney or designee are hereby authorized to take such further actions and execute such documents as may be necessary to effectuate the purposes of this Resolution.

PASSED AND ADOPTED by the City Council of the City of Scottsdale this ____ day of _____, 2023.

CITY OF SCOTTSDALE, an
Arizona municipal corporation,

ATTEST:

Ben Lane, City Clerk

David D. Ortega, Mayor

APPROVED AS TO FORM:

OFFICE OF THE CITY ATTORNEY

Sherry R. Scott, City Attorney
By: Eric C. Anderson, Sr. Asst. City Attorney

**INTERGOVERNMENTAL AGREEMENT
BETWEEN
RIO VERDE FOOTHILLS STANDPIPE DISTRICT
AND
CITY OF SCOTTSDALE**

THIS INTERGOVERNMENTAL AGREEMENT (the “Agreement”) between the Rio Verde Foothills Standpipe District, a political subdivision of the State of Arizona formed in accordance with A.R.S. § 9-500.40 (the “District”), and the City of Scottsdale, a municipal corporation of the State of Arizona (the “City”) (collectively, the “Parties”) is made and entered into ____ day of _____, 2023. In consideration of the following, the Parties agree as follows:

RECITALS

WHEREAS, the City is authorized to enter into this Agreement pursuant to A.R.S. § 9-500.40 and the Scottsdale City Charter § 3-1, Article 1; and

WHEREAS, the District is authorized by A.R.S. § 9-500.40; and

WHEREAS, the City and the District desire to enter into this Agreement for the purpose of providing a temporary water supply for the District to serve an unincorporated community known as the Rio Verde Foothills within the District; and

WHEREAS, the State of Arizona and its communities are facing a progressively worsening drought and under the City’s approved drought management plan, the City policy is to discontinue water hauling operations for water to be hauled to locations outside the municipal boundaries, and

WHEREAS, the District wishes to assist the unincorporated Rio Verde Foothills community (“RVF Community”) as the local body authorized to provide standpipe service on an emergency basis while a long-term water solution is being developed. The District believes that without such assistance there will be a public safety and health crisis within the RVF Community; and

WHEREAS, this Agreement is contingent on and shall not be effective unless the District is able to provide a water supply to the City as set forth herein.

NOW, THEREFORE, in consideration of the mutual covenants and promises contained in this Agreement and other good and valuable consideration, the Parties agree as follows:

TERMS

1. **Recitals.** The foregoing recitals are incorporated in this Agreement by this reference.
2. **Sale of Potable Water.** Pursuant and subject to the terms of this Agreement, the City shall treat on an annual basis Potable Water delivered to the City by the District or its designee and provide such treated water to the District via a City filling station located at 26002 N. Pima Road, Scottsdale, AZ (“Pima Road Filling Station”) for exclusive use by up to 750 residences that are located within an unincorporated area of Maricopa County adjacent to the City and within the boundaries of the District (See Exhibit 1 for approximate boundaries of the District). The District shall be responsible for determining whether a residence falls within these criteria. The District agrees that the City is not establishing a water utility service for the RVF Community, and this Agreement is intended as a short-term solution only.
3. **Water Supply.** City’s obligation to provide water to District as contemplated by this Agreement is contingent upon the District obtaining from a third party a supply of raw water suitable for treatment (“Raw Water”) as required by this Section 3. The supply of Raw Water shall be exclusive of any existing water supply rights the City may already possess or control. Any Raw Water rights obtained by the District and transferred to the City for treatment shall be capable of delivery to and accessible by the City through either the City’s turnout structure on the CAP canal or the City’s turnout structure on the SRP Arizona Canal; provided, however, any Raw Water delivered to City through the SRP Arizona Canal may not be legally restricted in such a manner as to be prohibited from use outside of SRP designated lands. Following or prior to the execution of this Agreement, the District will endeavor to obtain a satisfactory supply of Raw Water and upon so doing, City’s Water Resources Director will confirm through notice to District that the supply of Raw Water is acceptable. The City hereby acknowledges that if CAP water is delivered, CAP water will be acceptable. Upon the date of providing such notice, the operational term of this Agreement shall become effective (the “Operational Effective Date”) and City shall commence providing treated water (“Potable Water”) in accordance with this Agreement. In order to account for treatment and system delivery losses, the amount of Potable Water to be delivered by the City shall be no less than ninety two percent (92%) of the amount of Raw Water provided to the City by the District. In the event that the City’s access to the Raw Water supplied by the District is suspended, reduced or otherwise cannot be obtained, the City may reduce or suspend the delivery of Potable Water provided to District following fifteen (15) days written notice, but the City shall continue to treat the amount of Raw Water already delivered by the District to the City. If the Raw Water is suspended completely, the City has no obligation to provide further water to the District until such time as Raw Water deliveries to the City are resumed.
4. **Potable Water Delivery.** The District shall be solely responsible for delivery to residents within the RVF Community (collectively, the “District Members”) through the use of (i)

District employees (if any); (ii) contracted and licensed commercial water haulers (“Commercial Haulers”) that have been duly approved by the District for transport and delivery of Potable Water; and (iii) District Members who the District authorizes to “self-haul” Potable Water (collectively “Self Haulers”). No person other than District employees, District authorized Commercial Haulers, or District Members approved to self-haul Potable Water may obtain water at the Pima Road Filling Station pursuant to this Agreement. The District shall also be responsible for implementing necessary water conservation measures within the RVF Community to the extent required by A.R.S. 9-500.40.B.5.

Relationship of Parties

5. **Relationship of Parties**. This Agreement is not intended to and will not constitute, create, give rise to, or otherwise recognize a joint venture, partnership, or formal business association or organization of any kind between the parties, and the rights and obligations of the parties shall only be those expressly set forth in this Agreement.

Costs and Payment

6. **Raw Water Supply**. The District shall be responsible for any acquisition costs of the Raw Water Supply. The District shall pay on a monthly basis \$1000 per month base fee plus \$ 17.96 per 1000 gallons for delivered water to the City for the full reasonable costs of the City to treat, transport and transfer Potable Water provided to the District under this Agreement. The Potable Water delivered to the Pima Road Filling Station shall be of a quality not less than the quality of Potable Water that the City provides to its customers located in the City. Upon delivery at the Pima Road Filling Station, the City shall be relieved of any further responsibility for such delivered water. The District shall be solely responsible for any costs and risks associated with the delivery of water to the District Members (including changes to water quality after delivery to Water Haulers or Self-Haulers) and any associated billing to District Members. On each anniversary of the Operational Effective Date of this Agreement, the City may increase the cost for Potable Water in an amount not to exceed the City’s percentage increased cost to provide Potable Water, as set forth in a report prepared by the City in accordance with A.R.S. § 9-511.01.
7. **Accounts**. The City shall establish a single account for the District under which all Potable Water deliveries to the District shall occur. At the District’s direction through written notice to City, the City will establish up to five sub-accounts for Commercial Haulers and up to 95 individual sub-accounts for Self-Haulers to enable the District or its designee to track the amount delivered to its contracted Commercial Haulers or approved Self Haulers (collectively, “Haulers”) under this Agreement. The District or its designee shall notify the City of any changes in sub-accounts. The City will have up to seven days following such notice to initially establish subaccounts and have seven days to process changes to established sub-accounts following written notice to do so by the District. The City shall

not be responsible for any Hauler accounts in connection with any District Member that may receive water deliveries from the District. The District or its designee shall take reasonable steps to notify District Members that inquiries should be directed to the District or to such third party as the District may designate to handle customer accounts on its behalf. The City shall have no account responsibility beyond the single account and sub-accounts established for the District as set forth above.

8. **Pima Road Filling Station.** The City shall be responsible for routine maintenance of the Pima Road Filling Station. However, the City shall not be liable for any interruptions in service that may occur as a result of the Pima Road Filling Station becoming inoperable or otherwise unsuitable for delivery of Potable Water in accordance with this Agreement for reasons not caused by the City. In the event that the Pima Road Filling Station should become inoperable or unsuitable for a period of more than five days, the Parties will meet and discuss a temporary alternative for water deliveries until operation of the Pima Road Filling Station can be restored. The District shall be responsible to assure that all of its staff (if any), Members and Commercial Haulers and Self-Haulers utilize the Pima Road Filling Station in accordance with accepted practices and any rules and policies adopted by City. The City shall provide the District a copy of such accepted practices, rules and policies and amendments thereto. The City shall have the right to revoke privileges of any District staff person, Commercial Hauler or Self-Haulers that improperly utilizes the Pima Road Filling Station contrary to City adopted practices, rules and policies.
9. **Haulers.** The District or its designee shall be responsible to assure that any Hauler designated to accept water deliveries on behalf of the District maintains the applicable insurance coverages as required by Section 11.1 of this Agreement. District shall also require that any Hauler designate both City and District as additional insureds for water hauling activities performed pursuant to this Agreement. The District will notify the City in writing which Haulers have been authorized by the District to provide water to the District Members. This written notice must be given seven days prior to the initiation of service. District shall further be responsible to assure that any members of the District who are approved by District for self-hauling have reasonably necessary skills and training to operate the equipment utilized for such self-hauling and any vehicles or trailers used for self-hauling are appropriately registered and licensed by the State of Arizona. No Hauler vehicles or equipment shall be allowed to remain at the Pima Filling Station any longer than reasonably necessary to fill water tanks for delivery.
10. **Invoices.** The City shall submit a single invoice no later than the seventh day of each month with payment due by the District to the City within 30 days from the invoice date. Charges and payments due shall be subject to the same notice requirements, penalties, liens, shutoff and other enforcement provisions provided for all users of Potable Water from City pursuant to the Scottsdale Revised Code, as amended from time to time. Notwithstanding such requirements, delinquent charges shall accrue interest after forty-five (45) days from the date of billing at the rate of five percent (5.0%) per month.

Checks will be made payable to:
City of Scottsdale
Re: RVF Community Emergency Water IGA

Send payments to:
City Cashier
City of Scottsdale
7447 E. Indian School, Suite 215
Scottsdale, AZ 85251

11. Indemnification & Insurance: District or its designee shall provide insurance and indemnification as follows:

11.1 *Insurance Required.* Prior to the Operational Effective Date of this Agreement, and at all times thereafter, District shall obtain and cause to be in force and effect the following insurance:

- a. *Commercial General Liability.* Commercial general liability insurance with a limit of Two Million Dollars (\$2,000,000) for each occurrence and a Two Million Dollar (\$2,000,000) general aggregate limit per policy year. If a loss is reported to or becomes known by District that has an impact on the annual aggregate, District shall cause the annual aggregate limit to be reinstated for the remainder of the policy term affected by the impairment. The policy shall cover liability arising from premises, operations, independent contractors, products, completed operations, personal injury, bodily injury, advertising injury, any medical professionals based on the Pima Road Filling Station, and liability assumed under an “insured contract” including this Agreement. The policy will also cover District’s liability under the indemnity provisions of this Agreement. The policy shall contain a “separation of insureds” clause.
- b. *Automobile Liability.* Commercial business automobile liability insurance with limit of Two Million Dollars (\$2,000,000) for each occurrence covering any and all owned, hired, and non-owned vehicles assigned to or used in any way in connection with District’s use of the Pima Road Filling Station. Without limitation, all of such insurance shall cover hazards of motor vehicle use for loading and off-loading.
- c. *Workers’ Compensation.* Such workers’ compensation and similar insurance as is required by law and employer’s liability insurance with a minimum limit of Five Hundred Thousand Dollars (\$500,000) for each accident, Five Hundred Thousand Dollars (\$500,000) disease for each employee (if any in the case of the District), One Million Dollars (\$1,000,000) policy limit for disease.
- d. *Other Insurance.* Any other insurance City may reasonably require for the protection of City’s employees, officials, representatives, officers, directors, and agents

acting in connection with this Agreement (collectively “Additional Insureds”), the Pima Road Filling Station, surrounding property, or the activities carried on or about the Pima Road Filling Station. Likewise, City may elect by notice to District to increase the amount of any insurance to account for inflation, changes in risk, or any other factor that City reasonably determines to affect the prudent amount of insurance to be provided. The City shall provide the District notice of such increase, and the District shall have thirty (30) days to put such increase into effect.

11.2 *Form of Insurance.* All insurance policies shall meet the following requirements:

- a. All policies except workers’ compensation must name City and the other Additional Insureds as additional insureds. District or its designee shall cause coverage for Additional Insureds to be incorporated into each insurance policy by endorsement. City may give District notice of City’s election from time to time that any or all the Additional Insureds not be named as Additional Insureds with respect to specific insurance coverages.
- b. All property policies (if any) must name City as a loss payee as their interest may appear.
- c. District must provide City with at least thirty (30) days prior notice of any cancellation, reduction or other material change in coverage.
- d. All policies shall require that notices be given to City in the manner specified for notices to City under this Agreement.
- e. “Occurrence” coverage is required. “Claims made” insurance is not permitted except for Environmental Impairment Liability and employment liability insurance.
- f. Policies must also cover and insure District’s activities relating to the business operations and activities conducted from the Pima Road Filling Station.
- g. District or its designee must clearly show by providing copies of insurance policies, certificates, formal endorsements or other documentation acceptable to City that all insurance coverage required by this Agreement is provided.
- h. All insurance policies shall contain a waiver of any transfer rights of recovery (subrogation) against City and all other Additional Insureds.
- i. *Insurance Certificates.* District or its designee shall evidence all insurance by furnishing to City certificates of insurance annually and with each change in insurance. Certificates must evidence that the policy referenced by the certificate is in full force and

effect and that the policy satisfies each requirement of this Agreement applicable to the policy. For example, certificates must indicate that City and the other Additional Insureds are additional insureds and that insurance proceeds will be paid as required by this Agreement. Certificates must be in a form acceptable to City. All certificates are in addition to the actual policies and endorsements required. District shall provide updated certificates at City's request.

j. *Acceptable Insurers.* All insurance policies shall be issued by insurers acceptable to City. At a minimum, all insurers shall be duly licensed (or qualified unlicensed non-admitted insurer) by the State of Arizona, Department of Insurance. At a minimum, all insurers shall have and maintain an A.M. Best, Inc. rating of B++ 6.

k. *Primary Insurance.* District's or its designee's insurance shall be primary insurance. Any insurance or self-insurance maintained by City shall not contribute to District's insurance.

11.3 *Indemnity.* In addition to all other obligations hereunder, to the fullest extent permitted by law, throughout the term of this Agreement and until all obligations and performances under or related to this Agreement are satisfied and all matters described in this paragraph are completely resolved, District shall pay, indemnify, defend and hold harmless City and all other Additional Insureds for, from and against any and all claims or harm related to the Premises and/or District's performance of or failure to perform its obligations under this Agreement (the "Indemnity"). Without limitation, the Indemnity shall include and apply to any and all allegations, demands, judgments, assessments, taxes, impositions, expenses, proceedings, liabilities, obligations, suits, actions, claims (including without limitation claims of personal injury, bodily injury, sickness, disease, death, property damage, destruction, loss of use or other impairment), damages, losses, expenses, penalties, fines or other matters (together with all reasonable attorney fees, court costs, and the cost of appellate proceedings) which may arise in any manner out of any use of City Premises or City's property related to this Agreement or any actions, acts, errors, mistakes or omissions relating to work or services in the performance of or related to this Agreement, including any injury or damages or cause of action claimed or caused by any employees, contractors, subcontractors, tenants, subtenants, agents or other persons upon or using the Premises or surrounding areas related to this Agreement. Notwithstanding the foregoing, the Indemnity does not apply to:

11.3.1 Claims arising from the sole negligence of City.

11.3.2 Claims that the law prohibits from being imposed upon District.

11.4 These provisions requiring indemnity shall not be construed in any way to limit the insurance requirements set forth above or any applicable coverage thereunder.

11.5 The indemnity obligations under Section 11.3 shall survive termination of this Agreement.

12. **Entire Agreement; Modification.** This Agreement constitutes the full and complete understanding and agreement of the parties, it supersedes and replaces any and all previous representations, understandings, and agreements, written or oral, relating to its subject matter. There shall be no oral alteration or modification of this Agreement; this Agreement and its terms may not be modified or changed except in writing signed by both parties and approved by the governing bodies of the parties.
13. **Effective Date.** The Effective Date of this Agreement shall be when all of the following have occurred: 1) the Agreement has been approved by the governing bodies of the parties and 2) the Agreement has been executed by an authorized representative of each Party.
14. **Term.** The term of this Agreement shall terminate on December 31, 2025 unless sooner terminated in accordance with the terms of this Agreement or as provided by law. The Agreement may be administratively extended for a period of one additional (1) year upon mutual agreement of the City Manager and the Chairman of the District Board should the District be legally authorized to exist beyond December 31, 2025.
15. **Conflicts of Interest.** Each party acknowledges that the other has the statutory right for three (3) years to cancel this Agreement if, while this Agreement or any extension is in effect, any person significantly involved in negotiating, drafting or securing this Agreement on behalf of any party is (i) an employee or agent of the other party in any capacity, or (ii) a consultant to the other party with respect to the subject matter or this Agreement, as provided pursuant to A.R.S. § 38-511.
16. **Contract Administrator.** The Contract Administrator for the City shall be the Water Resources Director, or his designee or successor. The Contract Administrator for the District shall be Kent Thomas.
17. **E-Verify.** The Parties agree to, the extent applicable, comply with the E-VERIFY Program and the provisions of A.R.S. §41-4401 as follows.
 - 17.1 **Warranty of Compliance.** Under the provisions of A.R.S. §41-4401, both Parties warrant to the other that each Party will comply with all Federal Immigration laws and regulations that relate to their employees and that each now complies with the E-Verify Program under A.R.S. §23-214(A).
 - 17.2 **Breach of Warranty.** A breach of this warranty will be considered a material breach of this Agreement and may subject the breaching party to penalties up to and including termination of this Agreement.

17.3. Right to Inspect. Both Parties retain the legal right to inspect the papers of any employee who works on this Contract or subcontract to ensure compliance with the warranty given above.

17.4 Random Verification. Either Party may conduct a random verification of the employment records of the other to ensure compliance with this warranty.

17.5 Federal Employment Verification Provisions - No Material Breach. A Party will not be considered in material breach of this Agreement if it establishes that it has complied with the employment verification provisions prescribed by 8 USCA §1324(a) and (b) of the Federal Immigration and Nationality Act and the E-Verify requirements prescribed by A.R.S. §23-214(A).

17.6 Inclusion of Article in Other Contracts. The provisions of this Article must be included in any contract either Party enters into with any and all of its contractors or subcontractors who provide services under this Agreement.

18. **Execution.** This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. The signature pages from one (1) or more counterparts may be removed from such counterparts and such signature pages be attached to a single instrument so that the signatures of all parties may be physically attached to a single document.
19. **Delegation.** The District may delegate to a reputable private or public water company or organization, if such water company is willing to assume the responsibility for fulfilling all of District's obligations and responsibilities under this Agreement including the provision of insurance and indemnification as set forth in Section 11. Provided, however, any such delegation shall not relieve District of the ultimate responsibility for meeting its obligations and responsibilities under this Agreement.
20. **Reserve Fund.** District shall create a "Billing Reserve Account" for the purpose of securing payment of amounts due to the City for potable water deliveries under this Agreement. The account shall be in a form approved by the City's Contract Administrator. Commencing on the fourth month following execution of this Agreement and continuing each month thereafter, the District shall deposit into the Billing Reserve Account an amount of \$5000.00 until the account reaches \$125,000.00 (the Minimum Account Balance). . The Billing Reserve Account shall only be used for payment of amounts due to the City of Scottsdale and once the minimum account balance is reached, shall not be allowed to go below such Minimum Account Balance without the approval of the City.
21. **Conditional Assignment of Accounts.** In the event that District should default on payment of any amounts due to City, City shall have a lien upon and this section shall be deemed to operate as an automatic assignment to City of any accounts receivable that

District may possess to the extent necessary to satisfy the outstanding balance to the City of amounts due under this Agreement.

IN WITNESS WHEREOF, the Parties hereby execute this Agreement.

DISTRICT:

BY _____
Chairman, District Board

ATTEST:

BY _____
Thomas Braun
Board Secretary

CITY: CITY OF SCOTTSDALE, an Arizona municipal corporation

By: _____
David D. Ortega, Mayor

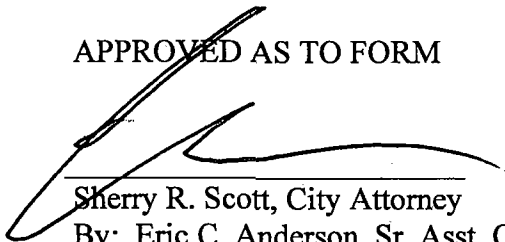
ATTEST:

Ben Lane, City Clerk

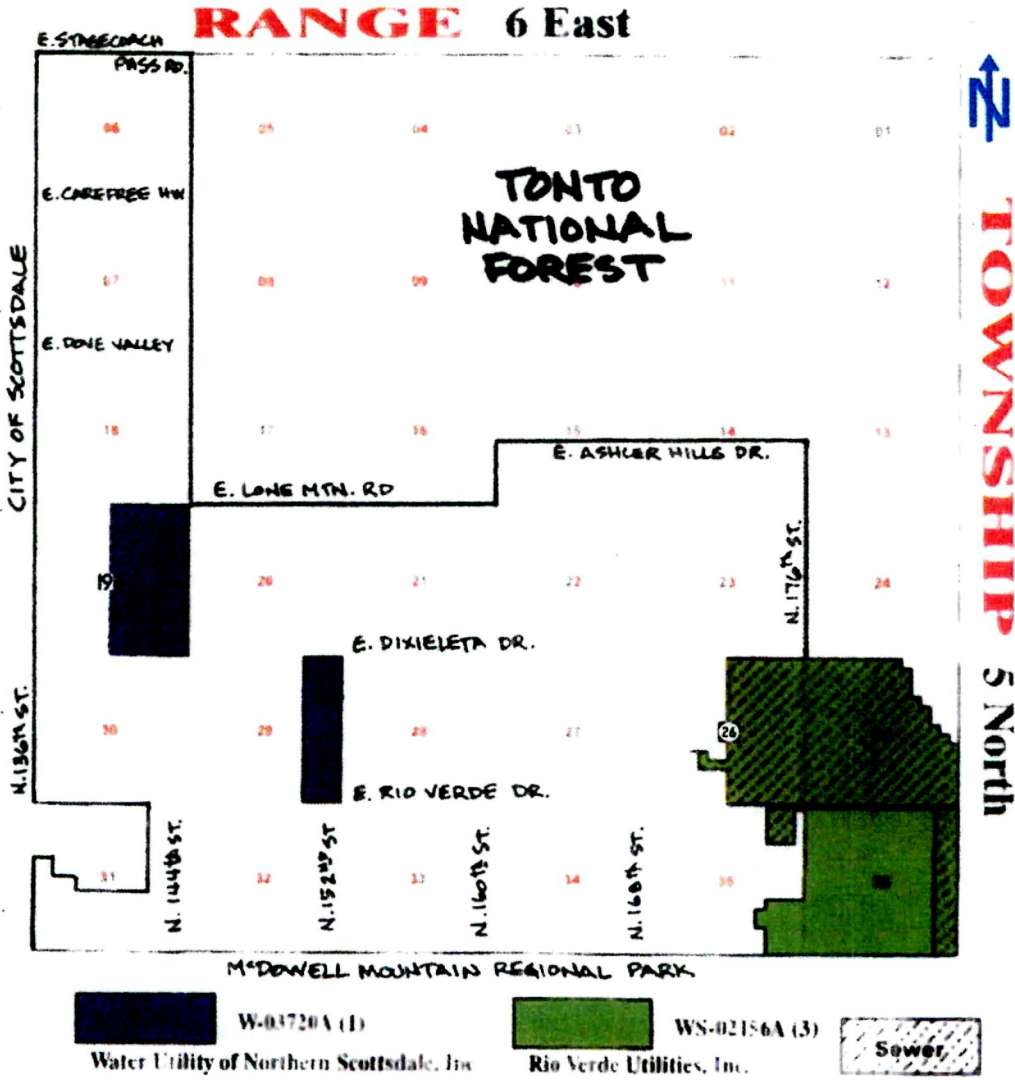
APPROVED:

Brian K. Biesemeyer, Water Resources Executive Director

APPROVED AS TO FORM



Sherry R. Scott, City Attorney
By: Eric C. Anderson, Sr. Asst. City Atty



September 5th, 2023

Rio Verde Foothills Standpipe District Intergovernmental Agreement



Brian K. Biesemeyer, PE
Scottsdale Water Executive Director

Rio Verde Foothills

- Rio Verde Foothills (RVF) is an unincorporated area in Maricopa County, east of the city of Scottsdale along the Dynamite/Rio Verde Dr. corridor
- 2016: All Rio Verde water hauling was relocated to the Pima Road filling station. Discussions were held with several water hauling companies and concerned RVF residents emphasizing that Scottsdale was not the Rio Verde Foothills communities long term water supplier.

Rio Verde Foothills

- May 2020: Letters to Maricopa County Supervisor Chucri and State Representative Kavanagh stating that Scottsdale is not obligated to provide water to Rio Verde and if restrictions on Colorado River water occur, Scottsdale intends to restrict service to only Scottsdale.
- February 2021: Scottsdale City Council provided consent for the formation of a proposed Rio Verde Foothills Domestic Water Improvement District.

Rio Verde Foothills

- May 2021: Second letter to Maricopa County Supervisor Chucuri and State Representative Kavanagh.
- August 2021: Scottsdale Activated its Drought Management Plan as a result of CAP water cuts.
- October 2021: Scottsdale Water Haulers (commercial and residential) notified that water hauling outside of the City of Scottsdale will cease on December 31, 2022.

Rio Verde Foothills

- August 2022: Scottsdale Water sends a second notice to Water Haulers that water hauling outside of the City of Scottsdale will cease on December 31, 2022
- August 2022: Maricopa County rejected the formation of the RVF Domestic Water Improvement District.
- December 2022: Water Hauling outside of Scottsdale stopped.

Rio Verde Foothills

- February 2023: City Council approves the general structure of an IGA with Maricopa County to provide water for RVF.
- June 2023: Governor Hobbs signs Senate Bill 1432 authorizing a Standpipe District for RVF
- August 2023: RVF Standpipe District starts discussions with City staff on an IGA

IGA Summary

- Terminates on December 31, 2025
- IGA is with the RVF Standpipe District (District) only
- No City responsibility after water delivery at the Pima Road Fill Station

IGA Summary

- Contingent on District obtaining a raw water source
- District limited to serving no more than 750 residents as stipulated in state law
- District will have a single account with subaccounts limited to 100

IGA Summary

- Cost:
 - Base Fee of \$1000.00 per month
 - \$17.96 per 1000 gallons delivered
- Fee to increase annually as Scottsdale Water rates increase.

Request

Adopt Resolution No. 12892 authorizing an intergovernmental agreement with the Rio Verde Foothills Standpipe District to provide a temporary raw water supply for the District.

From: notifications@cognitoforms.com on behalf of City of Scottsdale <notifications@cognitoforms.com>
Sent: Friday, September 1, 2023 8:21 AM
To: Cordova, Rommel
Subject: City Council Public Written Comment Form - Alex McLaren

⚠ External Email: Please use caution if opening links or attachments!

City of Scottsdale

Web Scottsdale City Council Meeting Written Comment Form

[Open Form](#)

Entry Details

| | |
|---|---|
| Agenda Item | |
| MEETING DATE | 9/5/2023 |
| WHICH AGENDA ITEM WOULD YOU LIKE TO COMMENT ON? | 12A. Temporary Water Supply Intergovernmental Agreement (IGA) |
| Name | |
| FULL NAME | Alex McLaren |
| Contact Information | |
| PHONE | (480) 322-8404 |
| EMAIL | Alexmclaren9@gmail.com |
| ADDRESS | 7624 E Osborn Rd |
| CITY | Scottsdale |

Comment

COMMENT

I strongly support the approval of this Agreement. It is the action that neighbors provide to those in need and although it has been a tortuous process it is the right thing to do.