

2020-136

STATE OF ARIZONA
DEPARTMENT OF WATER RESOURCES
1110 West Washington Street, Suite 310
Phoenix, AZ 85007

This Agreement is entered into by the CITY OF PRESCOTT (a municipal corporation of Arizona, as fiduciary for the Comprehensive Agreement No. 1) ("PRESCOTT") and the DIRECTOR of the ARIZONA DEPARTMENT OF WATER RESOURCES ("DEPARTMENT"), pursuant to A.R.S. § 11-952.

This document, including the General Provisions, Special Provisions, Scope of Service, and any attachments, shall constitute the entire agreement between the parties and supersedes all other understandings, oral or written.

Service: Big Chino Automated Groundwater Monitoring

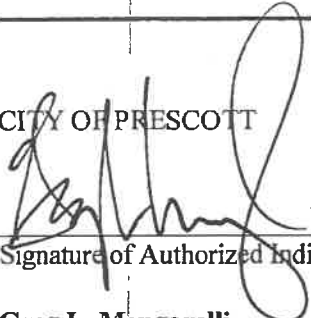
Term: Effective through June 30, 2024

Amount: Not to exceed \$59,150

The parties hereto agree to carry out the Provisions of this Agreement.

CITY OF PRESCOTT

ARIZONA DEPARTMENT OF WATER RESOURCES


Signature of Authorized Individual

12/11/19
Date


Signature of Authorized Individual

1/15/2020
Date

Greg L. Mengarelli

Thomas Buschatzke

Typed Name

Typed Name

Mayor

Director

Typed Title

Typed Title

CONTENTS PAGE

THIS AGREEMENT CONSISTS OF:

	<u>Page No.</u>
1. COVER PAGE	1
2. CONTENTS PAGE	2
3. GENERAL PROVISIONS	3
4. SPECIAL PROVISIONS	6
5. SCOPE OF SERVICES	
A. Purpose	7
B. Effective Date	7
C. Term	7
D. Notices, Correspondence and Reports	7
E. Payment	7
F. Introduction	8
G. Scope of Work	8
H. Schedule of Deliverables and Payments	9
6. LEGAL DETERMINATION	10

GENERAL PROVISIONS

1. GENERAL REQUIREMENTS:

- 1.1. The parties shall obtain and maintain all licenses, permits and authority necessary to perform their obligations pursuant to this Agreement, and shall comply with all applicable state, federal and local laws, including but not limited to those regarding unemployment insurance, disability insurance and worker's compensation. This Agreement does not relieve either party from any obligation or responsibility imposed upon it by law.
- 1.2. Neither party shall be considered an employee or agent of the other. No monitoring or supervisory responsibility over the other party's activities arises on the part of the other or arises as a result of, or pursuant to, this Agreement other than as expressly provided herein.
- 1.3. In this Agreement, Special Provisions alter the General Provisions. If the Special Provisions conflict with the General Provisions, the Special Provisions shall govern. If the Scope of Services conflicts with either the Special Provisions or the General Provisions, the terms of the Scope of Services shall govern.
- 1.4. The provisions of this Agreement are severable to the extent that if any provision is held unenforceable under applicable law, the remaining provisions of the Agreement shall remain in effect.
- 1.5. This Agreement shall be interpreted in accordance with Arizona law. Disputes arising out of this Agreement are subject to the jurisdiction of the Superior Court of the State of Arizona.

2. INDEMNIFICATION:

Each party to this Agreement is independently responsible in the event of its own negligence. Neither party agrees to indemnify the other party.

3. RESOLUTION OF DIFFERENCES:

- 3.1. The parties agree to resolve all conflicts to the maximum extent possible through cooperation and coordination of the respective party's staff. If staff is unable to resolve any dispute, it shall be submitted for resolution to the Department of Water Resources' Water Planning and Permitting Division Assistant Director.
- 3.2. Disputes arising out of this Agreement are subject to arbitration to the extent required by A.R.S. § 12-133 and § 12-1518. Disputes not subject to arbitration are subject to the jurisdiction of the Maricopa County Superior Court.
- 3.3. The waiver of any breach or default of any of the provisions of this Agreement shall not be construed as a waiver of any succeeding breach of the same or other provisions; nor shall any delay or omission on the part of either Party to exercise or avail itself of any right, power or privilege that it has or may have hereunder operate as a waiver of any breach or default by the other Party.

4. TERMINATION:

- 4.1. Each party shall have the right to terminate this Agreement in whole or in part, with or without cause, by providing the other party written notice of termination, effective fifteen (15) calendar days subsequent to the mailing by certified mail of such Notice of Termination. If the termination is partial, the parties shall continue to perform those portions of this Agreement which have not been terminated.
- 4.2. In the event of Termination as provided in subsection 4.1:
 - 4.2.1. The Department shall pay to Prescott its reasonable actual costs for work in progress as determined by generally accepted accounting principles and practices.

GENERAL PROVISIONS

4.2.2. If any Payments have been made on an advance basis, Prescott shall return any unexpended monies within fifteen (15) calendar days of receipt of Notice of Termination.

4.2.3. Prescott shall deliver to the Department all work in progress, and any completed documents, programs, data and other information or deliverables as described in this Agreement.

4.3. The Department or the State of Arizona may cancel this Agreement without penalty or further obligation pursuant to A.R.S. § 38-511, which provides for cancellations of any contract made by the State, its political subdivisions, or any of the departments or agencies of either if any persons significantly involved in initiating, negotiating, securing, drafting or creating the contract on behalf of the State, its political subdivisions or any of the departments or agencies of either is, at any time while the contract or any extension of the contract is in effect, an employee or agent of any other party of the contract with respect to the subject matter of the contract.

4.4. In the event of cancellation under Section 4.3 of this Agreement or if the term of the Agreement expires Prescott shall receive or return Payment as established in Section 4.2

4.5. In the event that the parties mutually agree to terminate a portion of the Agreement, Prescott shall continue to perform this Agreement to the extent not terminated under the provisions of this Section and receive or return Payment as established in Section 4.2.

5. NON-DISCRIMINATION:

The Parties shall comply with State Executive Order No. 75-5, as amended by State Executive Order No. 2009-9, and all other applicable Federal and State laws, rules and regulations relating to equal opportunity and non-discrimination, including the Americans with Disabilities Act.

6. PAYMENTS:

6.1. Payments made by the Department to Prescott pursuant to this Agreement are conditioned upon the availability to the Department of monies authorized for expenditure in the manner and for the purpose provided herein. The Department shall not be liable for any purchases entered into by Prescott in anticipation of such funding.

6.2. Payments are conditioned upon receipt of an applicable, accurate and complete invoice prepared by Prescott in accordance with Prescott's normal format and customary documentation. In the event of any conflict between this Agreement and any invoice, this Agreement shall prevail.

6.3. If Prescott is determined by the Department to be in default in the performance of any obligation under this Agreement, the Department, may, at its option and in addition to other available remedies, either adjust the amount of payment or withhold payment until satisfactory resolution of the default.

6.4. The Department may, at its option, withhold payment until receipt of all final reports or documents or until completion of a financial audit.

7. RECOUPMENT OF PAYMENTS:

Prescott shall immediately reimburse all monies not spent in accordance with the terms of this Agreement.

8. BOOKS, RECORDS AND INSPECTION:

All books, accounts, reports, files and other records relating to the Agreement shall be subject at all reasonable times to inspection and audit by the State of Arizona and the Department for five (5) years after completion of the Agreement. Such records shall be produced at such state offices as are designated by the State of Arizona and the Department.

GENERAL PROVISIONS

8. NOTICES:

Whenever notice is required pursuant to this Agreement, such notice shall be in writing and shall be directed to the persons and addresses specified in the Scope of Services or to such other persons and/or addresses as either party may designate to the other party in writing. Notice shall be delivered in person or by certified mail, return receipt requested.

9. AMENDMENTS:

Amendments to this Agreement shall not be effective unless in writing and signed by all parties.

10. SUBCONTRACTS:

Proposals to subcontract any Task or work described in this Agreement must be approved by the Department. Any subcontractor shall comply with the terms and conditions of the provisions of this Agreement.

11. WAIVERS:

Neither Prescott nor the Department shall waive or modify any condition or requirement contained in or made a part of this Agreement without a written amendment signed by the parties. The waiver of any breach or default of any of the provisions of this Agreement shall not be construed as a waiver of any succeeding breach of the same or other provisions.

12. DELIVERABLES:

Upon receipt of a Deliverable, the Department shall have a reasonable time period, not to exceed 45 days, to review the Deliverable. If the Department identifies deficiencies in the Deliverable, the Department shall provide Prescott written comments and shall establish a time period by which the identified deficiencies shall be corrected. If the deficiencies are not corrected within this time frame, the Department reserves the right to terminate the Agreement immediately upon sending written notice of such termination.

13. REPORTS, INFORMATION AND DATA:

Ownership of all reports, information, data, computer data elements and software prepared by Prescott in performance of this Agreement shall vest jointly in the parties. Subject to applicable State and Federal laws and regulations, the parties shall have full and complete rights to reproduce, duplicate, disclose and otherwise use all such information. In doing so, each party shall give credit for the contribution of the others.

14. DEPARTMENT ACKNOWLEDGEMENT:

Prescott shall ensure that the Department is acknowledged in all news releases, brochures, websites, other publicity or print pieces funded by the Department through this agreement by specifying that the project is funded, supported or made possible by funds from the Department. The name of the Department and its logo must appear in a conspicuous location and be large enough to be easily legible. If space is limited, the Department logo alone may be used.

SPECIAL PROVISIONS

None

SCOPE OF SERVICES

A. PURPOSE:

Install, maintain, and monitor water levels at specified Groundwater Site Inventory (GWSI) Index well sites in the Big Chino Sub-basin.

B. EFFECTIVE DATE:

This Agreement shall become effective upon the date it is executed by all parties.

C. TERM:

This Agreement shall be effective through June 30, 2024

D. NOTICES, CORRESPONDENCE AND REPORTS:

1. Notices, correspondence, reports and payments from the Department to Prescott shall be sent to:

Program Administrator:

Leslie Graser, Water Resource Administrator
City of Prescott
433 N Virginia Street
Prescott, AZ 86301
Phone: 928-777-1144
Email: Leslie.graser@prescott-az.gov

2. Notices and correspondence from Prescott to the Department shall be sent to:

Contract Officer:

Scott Selin
Arizona Department of Water Resources
1110 West Washington Street, Suite 310
Phoenix, AZ 85007
Email: sdselin@azwater.gov
Phone: (602) 771-8508
Fax: (602) 771-8686

3. Any reports and inquiries regarding the technical aspects of this Agreement should be made to:

Technical Administrator:

Paul Ivanich
Arizona Department of Water Resources
1110 West Washington Street, Suite 310
Phoenix, AZ 85007
Email: paivanich@azwater.gov
Phone: (602) 771-8668
Fax: (602) 771-8690

E. PAYMENT:

Payment will be remitted by Prescott to ADWR for one-half of the cost of installation, maintenance and monitoring of groundwater levels at GWSI Index Well sites specified in section G. Scope of Work. The actual cost will include the following:

SCOPE OF SERVICES

- Equipment necessary to establish seven well-monitoring sites, including, but not limited to, transducers and data loggers.
- Labor performed by ADWR for the installation, monitoring, maintenance and repair of the sites through the expiration of this IGA. Labor hours will include the personal services of the employee(s) performing the work, Employee Related Expenditures of 40%, and indirect cost (49.5%) as a percentage of total Personal Services and Employee Related Expenditures.
- Travel expenditures related to the installation, monitoring, maintenance and repair of the seven sites, including necessary hotel stays, meals and other incidentals, subject to limits imposed by the State of Arizona Accounting Manual (SAAM).

ADWR will prepare invoices on a quarterly basis, which will be submitted to the Program Administrator. The invoices shall be itemized in sufficient detail to justify payment for services performed in accordance with the tasks listed.

F. INTRODUCTION:

The purpose of this agreement is to establish Automated GWSI Index well sites in the Big Chino Sub-basin.

G. SCOPE OF WORK:

ADWR will install seven well-monitoring sites before the end of State Fiscal Year 2023. The costs to install the sites (equipment, labor, travel expenditures, etc.) will be shared between ADWR and Prescott. The sites are as follows:

Number	Name	Local ID	Registration No.	Site ID
1	MW-4F1	B-18-03 26BDD	55-803378	345500112324501
2	MW-4G	B-18-03 26ACC	55-921236	345502112325501
3	MW-4B1	B-18-01 28BCD	55-228266	345450112222301
4	MW-4B2	B-18-01 19ADC	55-228265	345542112235101
5	MW-4B3	B-18-01 31CCD	55-228262	345330112243401
6	MW-4D	B-17-02 11ABA	55-228472	345230112261101
7	SL-1	B-17-02 15BAA	55-526611	345153112273201

Once installed, ADWR and Prescott will share costs related to routine maintenance and repair. Routine maintenance will be performed no more than 4 times per year. Any repairs will be completed on an as-needed basis.

All maintenance and repair costs of the seven sites constructed under this agreement become the sole responsibility of ADWR after June 30, 2024.

G. ESTIMATED SCHEDULE OF INSTALLATIONS AND PAYMENTS:

ADWR anticipates that the installation of the sites will be completed, and costs incurred according to the following schedule:

SCOPE OF SERVICES

Projected Installation Schedule and Shared Costs

	FY 2021	FY 2022	FY 2023	FY 2024	Total
Number of Installations	3	3	1	0	7
Equipment	\$15,000	\$15,000	\$5,000	\$0	\$35,000
Installation	\$4,500	\$4,500	\$3,000	\$0	\$12,000
Maintenance	\$750	\$1,200	\$3,200	\$5,000	\$10,150
Overnight Expenses	\$500	\$500	\$500	\$500	\$2,000
Estimated Total	\$20,750	\$21,200	\$11,700	\$5,500	\$59,150

Deviations from the schedule may occur, but overall expenditures will not increase above the amounts listed without an amendment to this agreement.

LEGAL DETERMINATION

The attached Agreement between the Arizona Department of Water Resources and Prescott has been reviewed by the undersigned attorneys, who have determined that said Agreement is in proper form and is within the powers and authority of those parties represented by the undersigned.

Dated this 2nd day of Jan, 2019

Arizona Department of Water Resources

By: Kelly B...
Counsel

Dated this 12th day of DECEMBER, 2019

City of Prescott

By: Matthew Podracky
Counsel
Matthew Podracky, Interim City Attorney

