



Town of Chino Valley

MEETING NOTICE TOWN COUNCIL

REGULAR MEETING
Tuesday, June 11, 2013
6:00 P.M.

Council Chambers
202 N. State Route 89
Chino Valley, Arizona

AGENDA

ADDENDUM - 6/10/13

Item 6b	Adds attachment - Agreement for Professional Services with Ruth Mayday
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- 1) **CALL TO ORDER, INVOCATION; PLEDGE OF ALLEGIANCE; ROLL CALL**
- 2) **INTRODUCTIONS, PRESENTATIONS, AND PROCLAMATIONS**
- 3) **CALL TO THE PUBLIC**

Call to the Public is an opportunity for the public to address the Council concerning a subject that is not on the agenda. Public comment is encouraged. Individuals are limited to speak for three (3) minutes. The total time for Call to the Public may be up to 30 minutes per meeting. Council action taken as a result of public comment will be limited to directing staff to study the matter, scheduling the matter for further consideration and decision at a later date, or responding to speaker remarks.

- 4) **RESPONSE TO THE PUBLIC**

Response to the Public is an opportunity for the Mayor to inform the public about how Town officials addressed matters raised during Call to the Public at a previous meeting.

- 5) **CURRENT EVENT SUMMARIES AND REPORTS**

This item is for information only. The Mayor, any Councilmember, or Town Manager may present a brief summary or report of current events, or ask a staff member to provide the same. Presentation on information requested by the Mayor and Council will be made and questions answered. No action will be taken.

6) CONSENT AGENDA

All those items listed below are considered to be routine and may be enacted by one motion. Any Councilmember may request to remove an item from the Consent Agenda to be considered and discussed separately.

- a) Consideration and possible action to approve the May 28, 2013 regular meeting minutes. (Jami Lewis, Town Clerk)
- b) Consideration and possible action to approve Agreement for Professional Services between the Town of Chino Valley and Mayday Consulting, LLC for HUD Home Owner Occupied Housing Rehabilitation Program and Consulting Services for fiscal year 2013/2014. Funds to come from Contingency. (Cecilia Watts, General Services Director)
- c) Consideration and possible action to adopt Resolution No. 13-1013 authorizing the Town of Chino Valley to submit an application for State Housing Funds and certifying that said application will meet the Community's Housing and Community Development needs and the requirements of the State Housing programs, and authorizing all actions necessary to implement and complete the activities outlined in said application. (Cecilia Watts, General Services Director)
- d) Consideration and possible action to award the construction contract for the remodel of the Town of Chino Valley Library to Jebco Construction in an amount not to exceed \$87,866.00. Funds to come from Library Impact Fees, Friends of the Library, Arizona State Library Archives and Yavapai County Library. (Ron Gritman, Town Engineer)

7) ACTION ITEMS

- a) ZC 13-001: Consideration and possible action to adopt Ordinance No. 13-769 approving a zone change from "AR-5" Agricultural Residential (5 Acre Minimum) to "SR-1" Single Family Residential (1 Acre Minimum) for a parcel of approximately 5.74 Acres located at 1159 Red Cinder Road, Chino Valley, AZ 86323 and further described as Assessor's Parcel Number 306-18-009P. Owner/Applicant: Donna Jones (Dennis Price, Associate Planner)

Recommended Action: Adopt Ordinance No. 13-769 approving the zone change from "AR-5" Agricultural Residential (5 Acre Minimum) to "SR-1" Single Family Residential (1 Acre Minimum) for Assessor's Parcel No. 306-18-009P.

- b) *Continued from May 28, 2013:* Consideration and possible action regarding Council's annual performance evaluation of Town Manager Robert Smith. (Mayor & Council)
- c) Consideration and possible action to move up items 8a and 8b to this location on the agenda. (Mayor & Council)

Council invites the public to a brief reception to honor the outgoing and newly-elected Mayor and Councilmembers at this time. The Mayor and Councilmembers will join the reception after holding the executive session.

- d) Recognition of Vice-Mayor Carl Tenney and Councilmember Dean Echols for four years of service and parting comments by the same. (Mayor Marley)
- e) Administer Oaths of Office to Mayor-Elect Chris Marley and Councilmembers-Elect Linda Hatch, Pat McKee, and Don Wojcik. (Jami Lewis, Town Clerk)
- f) Consideration and possible action to nominate and elect a Councilmember to serve as Vice-Mayor from June 2013 through a specified time. (Jami Lewis, Town Clerk)

Recommended Action: Nominate and select Councilmember _____ to serve as Vice-Mayor from June 2013 through December 31, 2014.

- g) Presentation of report and recommendation of the SR89 Utility Project Citizens Committee, by Gary Warren, Committee Chair; and discussion and possible action regarding the same. (Ron Grittmann, Public Works Director; Pat Walker, Consultant)

Recommended Action: To be determined per Council discussion.

- h) Consideration and possible action to set a date for an orientation to review the Chino Valley Councilmember Handbook.

8) EXECUTIVE SESSION

Council may vote to go into executive session, which will not be open to the public, for legal advice and discussion with the Town's attorneys on any of the above agenda items pursuant to A.R.S. § 38-431.03(A)(3).

- a) Consideration and possible action to recess the Regular Meeting and hold an executive session pursuant to A.R.S. § 38-431.03(A)(3) &(4) for discussion or consultation with the Town Attorney for legal advice and in order to consider its position and instruct the Town Attorney regarding the Town's position regarding an intergovernmental agreement with the City of Prescott, Arizona, related to payments for the transportation of water that is the subject of negotiations, in pending or contemplated litigation or in settlement discussions conducted in order to avoid or resolve litigation, including the matter of City of Prescott v. Town of Chino Valley, Yavapai Superior Court No. 46161. (Robert Smith, Town Manager)
- b) Consideration and possible action to approve the Intergovernmental Agreement between the Town of Chino Valley and the City of Prescott relating to Payments for the Transportation of Water.

9) ADJOURNMENT

Dated this 6th day of June, 2013.

By: **Jami C. Lewis, Town Clerk**

The Town of Chino Valley endeavors to make all public meetings accessible to persons with disabilities. Please call 636-2646 (voice) or 636-1787 (TDD) 48 hours prior to the meeting to request a reasonable

accommodation to participate in this meeting. Supporting documentation and staff reports furnished to the Council with this agenda are available for review on the Town website at <http://www.chinoaz.net/clerk/townagenda.shtml>, and in the Public Library and Town Clerk's Office.

CERTIFICATION OF POSTING

The undersigned hereby certifies that a copy of this notice was duly posted at Chino Valley South Campus, Chino Valley Post Office, and Chino Valley North Campus in accordance with the statement filed by the Town Council with the Town Clerk.

Date: _____

Time: _____

By: _____
Jami C. Lewis, Town Clerk

AGREEMENT FOR PROFESSIONAL CONSULTING SERVICES FOR HUD HOMEOWNER OCCUPIED HOUSING REHABILITATION PROGRAM

This Agreement is made and entered into this 11th day of June, 2013, between the Town of Chino Valley, an Arizona municipal corporation ("Town"), and Mayday Consulting LLC, an Arizona limited liability company ("Consultant").

RECITALS

A. Town desires to retain a qualified firm to apply for HUD HOME funds to provide Owner Occupied Housing Rehabilitation services to qualified residents of the community; implement said program, and manage said program.

B. Consultant represents to Town that it is fully qualified to conduct the services desired.

C. The parties have negotiated upon the terms pursuant to which Consultant will provide such services and have reduced said terms to writing.

AGREEMENT

FOR THE PURPOSE of providing professional consulting services for the Town in securing and administering HUD Homeowner Occupied Housing Rehabilitation Program grants (the "Project"), Town and Consultant do hereby mutually agree to the following:

1. SERVICES AND RESPONSIBILITIES

1.1 Retention of Consultant. In consideration of the mutual promises contained in this Agreement, Town engages Consultant to render professional services set forth herein, in accordance with all the terms and conditions contained in this Agreement.

1.2 Scope of Services. Consultant shall provide the Town with the following services:

1.2.1 Prepare and submit in a timely fashion and in compliance with all deadlines, all documentation required for a complete application to the Arizona Department of Housing (ADOH). Prepare any and all resolutions or other items for Council approval, if required.

1.2.2 Consultant will submit the application on behalf of Town of Chino Valley; Town is ultimate recipient of funding.

1.2.3 All pre-application activities including, but not limited to, preparation of documents for resident applications, file management, qualification of applications, community outreach, and inspection forms and materials.

1.2.4 Should contract be awarded by ADOH, Consultant shall perform all contract management activities. However, Town is responsible for submitting Requests for Payments (RFPs) and receiving reimbursements from ADOH. Consultant shall timely prepare and provide complete RFPs and contract documents, using Town's standard forms, if available, to Town staff for review and approval prior to submittal.

1.2.5 Nothing herein shall preclude the Town from using its own staff to carry out similar work, separately or in cooperation with the Consultant. Furthermore, nothing herein shall preclude the Town from entering into additional agreements for similar services with other consultants.

1.3 Responsibility of Consultant.

1.3.1 Consultant hereby agrees that the documents and reports prepared by Consultant will fulfill the purposes of the Project, shall meet all applicable code requirements and shall comply with applicable laws and regulations. In addition, and not as a limitation on the foregoing, such documents and reports prepared by Consultant shall be prepared in accordance with professional Consulting standards, as applicable. Any review or approval of said documents and reports does not diminish these requirements.

1.3.2 Consultant shall designate _____ as its Project Representative. Consultant's Representative shall coordinate its activities with and submit its reports to Town's representative.

1.3.3 Consultant shall provide, pay for and insure under the requisite laws and regulations all labor, materials, equipment, and transportation, and other facilities and services necessary for the proper execution and completion of the Services.

1.3.4 Consultant shall obtain and pay for all business registrations, licenses, permits, governmental inspections and governmental fees necessary and customarily required for the proper execution and completion of Services. Consultant shall pay all applicable taxes. Consultant shall give all notices and comply with all laws, ordinances, rules, regulations and lawful orders of any public authority bearing on the performance of the Services.

1.3.5 Time of Performance. Consultant shall begin work on The Project upon receipt of a fully executed Agreement and shall work diligently and continuously to provide all the required services and activities described herein.

1.4 Responsibility of Town.

1.4.1 Town shall cooperate with Consultant by placing at his disposal all available information concerning the Project. Town agrees to obtain its own legal, insurance and financial advice Town may require for the Project.

1.4.2 Town designates Cecilia Watts as its Project Representative. All communications to Town shall be through its Project Representative.

1.5 Contract Term.

1.5.1 Contract Term; Renewal. This Agreement commences upon execution of the Agreement and continues through December 31, 2016.

2. COMPENSATION AND METHOD OF PAYMENT

2.1 Compensation. As compensation for all services of Consultant in performance of this agreement, Town shall pay Consultant \$50.00 per hour for services rendered.

2.1.1 Payments shall be in three (3) installments:

(1). Hourly rate for pre-application activities, not to exceed \$1,500, due upon completion of the pre-application activities;

(2). Hourly rate for composition of application, not to exceed \$2,500, due upon timely submittal of application to ADOH;

(3). If Town receives award, hourly rate for program design and contract management, not to exceed ten percent (10%) of HOME funds awarded.

2.1.2 Payments prescribed herein shall constitute all compensation to Consultant for all costs of service, including but not limited to: direct costs of labor of employees engaged by Consultant, telephone charges, typing, duplication, computer time, travel expenses, and other costs, expenses and charges of Consultant, its agents and employees.

2.2 Method of Payment. Payments prescribed herein shall be paid to Consultant monthly. Consultant shall prepare monthly invoices and progress reports which clearly itemize the work and services performed for the previous month, and a work plan for the following month. Payment by Town shall be made within 15 days of receipt of such invoice.

3. DOCUMENTATION: RETENTION OF MATERIALS

3.1 Consultant shall maintain adequate documentation to substantiate its charges for hours and materials as required by Section 2 of this Agreement.

3.2 Consultant shall maintain both Program and Project files in an orderly fashion, and provide such files to ADOH and/or HUD as requested. Consultant shall provide both Program and Project files to Town for audit and record retention purposes.

4. INDEMNIFICATION

4.1 To the fullest extent permitted by law, Consultant, its successors, assigns and guarantors, shall pay, defend, indemnify and hold harmless Town, its agents, officers, officials and employees from and against all demands, claims, proceedings, suits, damages, losses and expenses (including but not limited to attorney fees, court costs, and the cost of appellate proceedings), and all claim adjustment and handling expenses, relating to, arising out of, or alleged to have resulted from acts, errors, mistakes, omissions, Services caused by Consultant, its agents, employees or any tier of Consultant's subconsultants related to the Services in the performance of this Agreement. Consultant's duty to defend, hold harmless and indemnify Town, its agents, officers, officials and employees shall arise in connection with any claim, damage, loss or expense that is attributable to bodily injury, sickness, disease, death, or injury to, impairment, or destruction of property including loss of use of resulting therefrom, caused by Consultant's acts, errors, mistakes, omissions, Services in the performance of this Agreement including any employee of the Consultant, any tier of Consultant's subconsultant or any other person for whose acts, errors, mistakes, omissions, Services the Consultant may be legally liable including Town. Such indemnity does not extend to Town's negligence.

4.2 If any claim, action or proceeding is brought against Town by reason of any event that is the subject of this Agreement and or described herein, upon demand made by Town, Consultant, at its sole costs and expense, shall pay, resist or defend such claim or action on behalf of Town by attorney of Consultant, or if covered by insurance, Consultant's insurer, all of which must be approved by Town, which approval shall not be unreasonably withheld or delayed. Town shall cooperate with all reasonable efforts in the handling and defense of such claim. Included in the foregoing, Town may engage its own attorney to defend or assist in its defense. Any settlement of claims shall fully release and discharge the indemnified parties from any further liability for those claims. The release and discharge shall be in writing and shall be subject to approval by Town, which approval shall not be unreasonably withheld or delayed. If Consultant neglects or refuses to defend Town as provided by this Agreement, any recovery or judgment against Town for a claim covered under this Agreement shall conclusively establish Consultant's liability to Town in connection with such recovery or judgment, and if Town desires to settle such dispute, Town shall be entitled to settle such dispute in good faith and Consultant shall be liable for the amount of such settlements and all expenses connected to the defense, including reasonable attorney fees, and other investigative and claims adjusting expenses.

5. ASSIGNABILITY

Consultant shall not assign any interest in this Agreement, and shall not transfer any interest in the same without the prior written consent of Town thereto; provided, however, that claims for money due or to become due to the Consultant from Town under this Agreement may be assigned to a bank, trust company, or other financial institution without such approval. Notice of any such assignment or transfer shall be furnished promptly to Town.

6. TERMINATION

6.1 Termination. This Agreement may be terminated by either party by giving thirty (30) days' written notice to the other party of its intent to terminate the Agreement.

6.2 Payment to Consultant upon Termination. Upon such termination, Consultant shall submit to Town an itemized invoice for services performed to the date of termination in accordance with Section 2 of this Agreement. Said services may include both completed work and work in progress at the time of termination. Town shall pay Consultant for any such work for which compensation has not previously been made by Town within 15 days of receipt of said invoice.

7. ASSURANCES.

7.1 Solicitations for Subconsultants, Including Procurements of Materials and Equipment. In all solicitations either by competitive bidding or negotiation made by the Consultant for Services to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subconsultant or supplier shall be notified by the Consultant of the Consultant's obligations under this Agreement and any Regulations relative to nondiscrimination on the grounds of race, color or national origin.

7.2 Examination of Records. Consultant agrees that duly authorized representatives of Town shall, until the expiration of three (3) years after final payment under this Agreement, have access to and the right to examine any directly pertinent books, documents, papers, and records of the Consultant involving transactions related to this Agreement.

7.3 Litigation. Should litigation be necessary to enforce any term or provision of this Agreement, or to collect any damages claimed or portion of the amount payable under this Agreement, that all litigation and collection expenses, witness fees, court costs, and reasonable attorneys' fees incurred shall be paid to the prevailing party.

7.4 Independent Consultant. This Contract does not create an employee/employer relationship between the parties. It is the parties' intention that Consultant will be an independent Consultant and not Town's employee for all purposes, including, but not limited to, the application of the Fair Labor Standards Act, Federal Insurance Contribution Act, the Social Security Act, the Federal Unemployment Tax Act, the Internal Revenue Code, the Immigration and Naturalization Act, Arizona revenue and taxation laws, Arizona Workers' Compensation Law, and Arizona Unemployment

Insurance Law. Consultant agrees that it is a separate and independent enterprise from Town, that it has a full opportunity to find other business, that it has made its own investment in its business, and that it will utilize a high level of skill necessary to perform the work. This Contract shall not be construed as creating any joint employment relationship between Consultant and Town, and Town will not be liable for any obligation incurred by Consultant, including but not limited to unpaid minimum wages and/or overtime premiums.

7.5 Immigration Law Compliance Warranty. As required by A.R.S. § 41-4401, Consultant hereby warrants its compliance with all federal immigration laws and regulations that relate to its employees and A.R.S. § 23-214(A). Consultant further warrants that after hiring an employee, Consultant verifies the employment eligibility of the employee through the E-Verify program. If Consultant uses any subconsultants in performance of the Services, subconsultants shall warrant their compliance with all federal immigration laws and regulations that relate to its employees and A.R.S. § 23-214(A), and subconsultants shall further warrant that after hiring an employee, such subconsultant verifies the employment eligibility of the employee through the E-Verify program. A breach of this warranty shall be deemed a material breach of the Contract that is subject to penalties up to and including termination of the Contract. Consultant is subject to a penalty of \$100 per day for the first violation, \$500 per day for the second violation, and \$1,000 per day for the third violation. Town at its option may terminate the Contract after the third violation. Consultant shall not be deemed in material breach of this Contract if the Consultant and/or subconsultants establish compliance with the employment verification provisions of Sections 274A and 274B of the federal Immigration and Nationality Act and the E-Verify requirements contained in A.R.S. § 23-214(A). Town retains the legal right to inspect the papers of any Consultant or subconsultant employee who works on the Contract to ensure that the Consultant or subconsultant is complying with the warranty. Any inspection will be conducted after reasonable notice and at reasonable times. If state law is amended, the parties may modify this paragraph consistent with state law.

7.6 Equal Treatment of Workers. Consultant shall keep fully informed of all federal and state laws, county and local ordinances, regulations, codes and all orders and decrees of bodies or tribunals having any jurisdiction or authority, which in any way affect the conduct of the Services. Consultant shall at all times observe and comply with all such laws, ordinances, regulations, codes, orders and decrees; this includes, but is not limited to laws and regulations ensuring equal treatment for all employees and against unfair employment practices, including the Occupational Safety and Health Administration (“OSHA”) and the Fair Labor Standards Act (“FLSA”). Consultant shall protect and indemnify Town and its representatives against any claim or liability arising from or based on the violation of such, whether by Consultant or its employees.

7.7 Sudan and Iran. Consultant warrants that it does not have scrutinized business operations in Sudan or Iran, as prohibited by A.R.S. §§ 35-391.06 and 35-393.06, and further acknowledges that any subcontractor who is contracted by Consultant to perform

work pursuant to the Agreement shall warrant that they do not have scrutinized business operations in Sudan or Iran.

7.8 Exclusive Use of Services - Confidentiality. The services agreed to be provided by Consultant within this Agreement are for the exclusive use of Town and Consultant shall not engage in conflict of interest nor appropriate Town work product or information for the benefit of any third parties without Town consent.

7.9 Ownership of Programs and Materials. All documents (whether printed or stored as electronic, magnetic, or digital information) including, but not limited to program design, materials produced, notes, and files are and shall remain the property of Town. Consultant shall, upon completion of the services or at the conclusion of this Agreement (whichever is earlier), deliver to Town all documents (whether complete or partially complete) produced or collected by Consultant in Consultant's performance under this Agreement. Consultant may, at Consultant's expense, reproduce and retain a copy of all documents and materials produced or collected under this Agreement.

7.10 Sole Agreement. There are no understandings or agreements except as herein expressly stated.

7.11 Caption. Paragraph captions are for convenience only and are not to be construed as a part of this Agreement; and in no way do they define or limit the Agreement.

7.12 Time is of the Essence. The timely completion of the Project is of critical importance to the economic circumstances of Town.

7.13 Notices. Except as otherwise specifically provided in this Agreement, any notice, submittal, or communication to be given under this Agreement shall be in writing, shall be deemed to have been given when personally served or when mailed by certified or registered mail, addressed as follows:

TOWN: Town Clerk
Town of Chino Valley
202 N. State Route 89
Chino Valley, AZ 86323

CONSULTANT: Mayday Consulting LLC
402 Ben J Trail
Chino Valley, AZ 86323

The address may be changed from time to time by either party by serving notice to the other party as provided above.

7.14 Controlling Law. This Agreement is to be governed by the laws of the State of Arizona.

8 INTERESTS AND BENEFITS

8.1 Interest of Consultant. Consultant covenants that he presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this Agreement. Consultant further covenants that in the performance of this Agreement, no person having any such interest shall be employed.

8.2 Interest of Town Members and Others. No officer, member or employee of Town and no member of its governing body, who exercises any functions or responsibilities in the review or approval of the undertaking or carrying out of the services to be performed under this Agreement, shall participate in any decision relating to this Agreement which affects his personal interest or have any personal or pecuniary interest, direct or indirect, in this Agreement or the process thereof.

8.3 Notice Regarding A.R.S. § 38-511. This Contract is subject to cancellation under Section 38-511, Arizona Revised Statutes.

9. ADDITIONAL SERVICES

9.1 If Town makes a decision to change the scope of work, as delineated in Paragraph 1.2 above, all such changes shall be by written amendment to this Agreement and shall be paid for on the hourly charge basis set forth in Section 2, Paragraph A.

10. CHANGES TO THE SCOPE OF SERVICES.

10.1 Change Orders. Town may, at any time, and by written change order, make changes in the services to be performed under this Agreement. A form of change order is attached hereto as Exhibit A. If such changes cause an increase or decrease in the Consultant's cost or time required for performance of any services under this Agreement, an equitable adjustment shall be made and the Agreement shall be modified in writing accordingly. Any claim of Consultant for adjustment under this clause must be submitted in writing within thirty (30) days from the date of receipt by Consultant of the notification of change. It is distinctly understood and agreed by the parties that no claim for extra services provided or materials furnished by Consultant will be allowed by Town except as provided herein, nor shall Consultant provide any services or furnish any materials not covered by this Agreement unless Town first approves in writing.

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IN WITNESS WHEREOF, Town and Consultant have executed this Agreement as of the date first written.

TOWN OF CHINO VALLEY

By: _____
Chris Marley, Mayor

ATTEST:

By: _____
Jami Lewis, Town Clerk

APPROVED AS TO FORM:

By: _____
Curtis, Goodwin, Sullivan,
Udall & Schwab, P.L.C.
Town Attorneys

CONSULTANT

By: _____
Its: _____