



Town of Chino Valley

MEETING NOTICE TOWN COUNCIL

REGULAR MEETING
Tuesday, September 24, 2013
6:00 P.M.

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

AGENDA

ADDENDUM, DATED 9/17/13

Items 8a & 9a	<i>ADDS backup material (Council & Staff only)</i>
Items 8b & 9b	<i>ADDS backup material (Council & Staff only)</i>

1) CALL TO ORDER, INVOCATION; PLEDGE OF ALLEGIANCE; ROLL CALL

2) INTRODUCTIONS, PRESENTATIONS, AND PROCLAMATIONS

- a)** Proclamation declaring September 22-28, 2013 as "Employer Support of the Guard and Reserve Week," sponsored by ESGR.
- b)** Presentation of \$10,000 donation from Sturm, Ruger to the Chino Valley Police Department for the new canine, Bronco. (Chuck Wynn, Police Chief)

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 criticism.

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.

7) ACTION ITEMS

- a)** Consideration and possible action to approve License Agreement between the Town of Chino Valley and Yavapai Regional Transit for continued use of Town property and/or right of ways and/or easements for picking up and dropping off passengers, effective October 1, 2013. (Councilmember Linda Hatch; Councilmember Pat McKee)

Recommended Action: Approve the License agreement between the Town of Chino Valley and Yavapai Regional Transit, effective October 1, 2013.

NOTE: This item was not reviewed by the Finance Director and may be subject to change.

- b)** Consideration and possible action to appoint applicants to fill vacancies on various public bodies. (Jami Lewis, Town Clerk)

Recommended Action: Appoint applicants to the Chino Valley Board of Adjustment, Industrial Development Authority, Parks and Recreation Advisory Board, Roads and Streets Committee, and Senior Center Advisory Board as recommended by the Appointments Subcommittee.

8) EXECUTIVE SESSION

Council may vote to recess the Regular Meeting and hold an executive session, which will not be open to the public, for the following purposes:

- a)** Council may vote to go into executive session pursuant to A.R.S. § 38-431.03(A)(3) and (7) for discussion or consultation with the Town Attorney for legal advice and with designated representatives of the Town in order to consider its position and instruct its representatives regarding negotiations for the purchase, sale or lease of real property that is an extension of the existing Road 4 South to the east, in the immediate vicinity of the section line, consisting of approximately 8.6 acres. (Robert Smith, Town Manager)

- b) Council may vote to go into executive session pursuant to A.R.S. § 38-431.03(A)(4) for discussion or consultation with the Town Attorney 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 related to payments for the transportation of water that is the subject of negotiations. (Robert Smith, Town Manager)

9) **ACTION ITEMS RESUMED**

After the Executive Session, Council will reconvene the Regular Meeting.

- a) Consideration and possible action to approve either or both a Letter of Intent and a Purchase Agreement with Deep Well Ranches #1 LLC, related to and setting forth the terms of the purchase by the Town of approximately 8.6 acres of real property, generally located in the vicinity of the section line as an extension of the existing Road 4 South to the east to lands immediately adjacent to the Peavine Right of Way's eastern limit for the purpose of extending the Road 4 South right-of-way to Peavine Road. (Robert Smith, Town Manager)
- b) Consideration and possible action to approve an Intergovernmental Agreement with the City of Prescott related to Payments for the Transportation of Water. (Robert Smith, Town Manager)

10) **ADJOURNMENT**

Dated this 19th day of September, 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

SELMER D. LUTEY, P.L.L.C.
OF COUNSEL TO

148 N. Summit Avenue
Prescott, Arizona 86301
Email: slutey@qwestoffice.net



Office: 928-445-5055
Facsimile: 928-445-7557
Email: dmorgan@qwestoffice.net

MURPHY, SCHMITT, HATHAWAY & WILSON, P.L.L.C.
Attorneys at Law

September 17, 2013

LETTER OF INTENT

Chris Marley, Mayor
Town of Chino Valley
202 N. State Route 89
Chino Valley, Arizona 86323

Re: Sale and Purchase of 8.569+/- Acres of Land in Yavapai County, Arizona

Dear Mr. Marley:

The following Letter of Intent sets forth the basic terms and conditions for the proposed purchase and sale of that certain real property hereinafter described.

1. Property: The real property (hereinafter "Property") shall consist of approximately 8.569+/- acres of land, which Property is located in Yavapai County, Arizona. The legal description of which shall be provided by survey to be completed by CIVILTEC Engineering, Inc., and confirmed by Kelley/Wise Engineering, and approved by the parties. Each party shall pay their respective surveyor's fees and costs. A copy of the final legal description shall be attached hereto as Exhibit "A", when confirmed, and is made a part hereof by the reference.
2. Buyer: Town of Chino Valley, a municipality
ATTN: Chris Marley, Mayor
202 N. State Route 89
Chino Valley, Arizona 86323

3. Seller: James Deep Well Ranches #1, L.L.C.,
an Arizona limited liability company
8400 N. U.S. Highway 89
Prescott, Arizona 86301
4. Purchase Price: One Hundred Seventy-One Thousand, Three Hundred Eighty and 00/100 Dollars(\$171,380.00). (Twenty Thousand and 00/100 Dollars (\$20,000.00) per acre.)
The total purchase price may be more or less depending on the actual acreage certified by the surveyors.
5. Earnest Money: The Buyer shall make an initial deposit into escrow of Twenty-One Thousand, Three Hundred Eighty and 00/100 Dollars (\$21,380.00) within three (3) days of notification from Escrow Agent that they are in receipt of a fully executed Purchase Contract. The initial Earnest Money Deposit shall be applied to the purchase price. The entire remaining balance of the purchase price of One Hundred Fifty Thousand and 00/100 Dollars (\$150,000.00) shall be paid to Escrow Agent for the benefit of Seller on or before close of escrow.
6. Additional Obligations and Considerations: Buyer has agreed to the additional obligations and considerations which shall include, but not be limited to, those items set forth in Exhibit "B" attached hereto and made a part hereof by this reference.
7. Escrow: Escrow shall be opened at Yavapai Title Agency, ATTN: Connie Allmon, Escrow Officer, 123 N. Montezuma Street, Prescott, Arizona 86303, within three (3) days of the signing of the Purchase Contract. Buyer shall be responsible to pay all escrow fees, recording costs, etc.
8. Close of Escrow: Close of escrow shall occur on or before October 30, 2013, or at such other time as the parties may agree.

9. Title Insurance: Seller will provide Buyer a standard owner's policy.
10. Feasibility: Buyer shall have thirty (30) days from opening of escrow (hereinafter "Feasibility Period") to determine whether the Property is feasible and suitable for its intended use. If escrow is not terminated by Buyer prior to expiration of the Feasibility Period, the Earnest Money Deposit shall become non-refundable, except in the case of a Seller default.
11. Entry and Inspection: Buyer shall have access to the Property at times agreed to by the parties. Buyer shall restore the Property to its prior condition. Buyer shall indemnify and hold Seller harmless from and against any and all claims arising as a result of Buyer's inspection.
12. Taxes and Insurances: Seller shall be responsible for all taxes and insurance prior to close of escrow and Buyer shall be responsible for all taxes and insurance after close of escrow.
13. Seller's Environmental Representations: Seller makes no representation as to the environmental condition of the Property.
14. "As-Is" Condition: Buyer purchases the Property "as-is", "where-is", and with all faults.
15. Default: If closing fails to occur due to Buyer's default, Seller may cancel the Purchase Contract and retain the Earnest Money Deposit as liquidated damages and Buyer shall be responsible for all Escrow Agent's escrow fees and title costs. In the event of Seller's default, Buyer may cancel the Purchase Contract and have the Earnest Money Deposit returned and Seller shall be responsible for all of Escrow Agent's escrow fees and title costs. The foregoing remedies shall be Buyer's sole remedy in lieu of any other remedy at law or equity, and Buyer expressly waives any claim for damages.

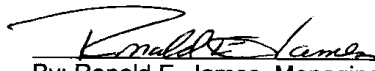
SELMER D. LUTEY, P.L.L.C.

Page 4

This Letter of Intent is merely a preliminary statement of general terms and conditions of the proposed sale and purchase. The parties mutually agree that neither party shall have any binding contractual obligations to the other with respect to the proposed sale and purchase referred to herein unless and until a formal written Purchase Contract has been prepared and fully executed by the parties hereto.

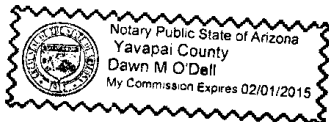
AGREED AND ACCEPTED this _____ day of _____, 2013, by:

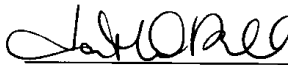
SELLER: JAMES DEEP WELL RANCHES #1, L.L.C.,
An Arizona limited liability company


By: Ronald E. James, Managing Member

STATE OF ARIZONA)
)
County of Yavapai) ss.

SUBSCRIBED AND SWORN to before me this 17th day of September, 2013, by RONALD E. JAMES, Managing Member of James Deep Well Ranches #1, L.L.C., an Arizona limited liability company.




Notary Public

AGREED AND ACCEPTED this _____ day of _____, 2013 by:

BUYER: TOWN OF CHINO VALLEY, a municipality
By _____
Name: Chris Marley
Its: Mayor

SELMER D. LUTEY, P.L.L.C.

Page 5

STATE OF _____)
County of _____) ss.

SUBSCRIBED AND SWORN to before me this ____ day of _____,
2013, by CHRIS MARLEY, the Mayor for the Town of Chino Valley, a municipality.

Notary Public

SELMER D. LUTEY, P.L.L.C.

Page 6

EXHIBIT "A"
Legal Description

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50
51
52
53
54
55
56
57
58
59
60
61
62
63
64
65
66
67
68
69
70
71
72
73
74
75
76
77
78
79
80
81
82
83
84
85
86
87
88
89
90
91
92
93
94
95
96
97
98
99
100
101
102
103
104
105
106
107
108
109
110
111
112
113
114
115
116
117
118
119
120
121
122
123
124
125
126
127
128
129
130
131
132
133
134
135
136
137
138
139
140
141
142
143
144
145
146
147
148
149
150
151
152
153
154
155
156
157
158
159
160
161
162
163
164
165
166
167
168
169
170
171
172
173
174
175
176
177
178
179
180
181
182
183
184
185
186
187
188
189
190
191
192
193
194
195
196
197
198
199
200
201
202
203
204
205
206
207
208
209
210
211
212
213
214
215
216
217
218
219
220
221
222
223
224
225
226
227
228
229
230
231
232
233
234
235
236
237
238
239
240
241
242
243
244
245
246
247
248
249
250
251
252
253
254
255
256
257
258
259
260
261
262
263
264
265
266
267
268
269
270
271
272
273
274
275
276
277
278
279
280
281
282
283
284
285
286
287
288
289
290
291
292
293
294
295
296
297
298
299
300
301
302
303
304
305
306
307
308
309
310
311
312
313
314
315
316
317
318
319
320
321
322
323
324
325
326
327
328
329
330
331
332
333
334
335
336
337
338
339
340
341
342
343
344
345
346
347
348
349
350
351
352
353
354
355
356
357
358
359
360
361
362
363
364
365
366
367
368
369
370
371
372
373
374
375
376
377
378
379
380
381
382
383
384
385
386
387
388
389
390
391
392
393
394
395
396
397
398
399
400
401
402
403
404
405
406
407
408
409
410
411
412
413
414
415
416
417
418
419
420
421
422
423
424
425
426
427
428
429
430
431
432
433
434
435
436
437
438
439
440
441
442
443
444
445
446
447
448
449
450
451
452
453
454
455
456
457
458
459
460
461
462
463
464
465
466
467
468
469
470
471
472
473
474
475
476
477
478
479
480
481
482
483
484
485
486
487
488
489
490
491
492
493
494
495
496
497
498
499
500
501
502
503
504
505
506
507
508
509
510
511
512
513
514
515
516
517
518
519
520
521
522
523
524
525
526
527
528
529
530
531
532
533
534
535
536
537
538
539
540
541
542
543
544
545
546
547
548
549
550
551
552
553
554
555
556
557
558
559
560
561
562
563
564
565
566
567
568
569
570
571
572
573
574
575
576
577
578
579
580
581
582
583
584
585
586
587
588
589
590
591
592
593
594
595
596
597
598
599
600
601
602
603
604
605
606
607
608
609
610
611
612
613
614
615
616
617
618
619
620
621
622
623
624
625
626
627
628
629
630
631
632
633
634
635
636
637
638
639
640
641
642
643
644
645
646
647
648
649
650
651
652
653
654
655
656
657
658
659
660
661
662
663
664
665
666
667
668
669
670
671
672
673
674
675
676
677
678
679
680
681
682
683
684
685
686
687
688
689
690
691
692
693
694
695
696
697
698
699
700
701
702
703
704
705
706
707
708
709
710
711
712
713
714
715
716
717
718
719
720
721
722
723
724
725
726
727
728
729
730
731
732
733
734
735
736
737
738
739
740
741
742
743
744
745
746
747
748
749
750
751
752
753
754
755
756
757
758
759
760
761
762
763
764
765
766
767
768
769
770
771
772
773
774
775
776
777
778
779
780
781
782
783
784
785
786
787
788
789
790
791
792
793
794
795
796
797
798
799
800
801
802
803
804
805
806
807
808
809
810
811
812
813
814
815
816
817
818
819
820
821
822
823
824
825
826
827
828
829
830
831
832
833
834
835
836
837
838
839
840
841
842
843
844
845
846
847
848
849
850
851
852
853
854
855
856
857
858
859
860
861
862
863
864
865
866
867
868
869
870
871
872
873
874
875
876
877
878
879
880
881
882
883
884
885
886
887
888
889
890
891
892
893
894
895
896
897
898
899
900
901
902
903
904
905
906
907
908
909
910
911
912
913
914
915
916
917
918
919
920
921
922
923
924
925
926
927
928
929
930
931
932
933
934
935
936
937
938
939
940
941
942
943
944
945
946
947
948
949
950
951
952
953
954
955
956
957
958
959
960
961
962
963
964
965
966
967
968
969
970
971
972
973
974
975
976
977
978
979
980
981
982
983
984
985
986
987
988
989
990
991
992
993
994
995
996
997
998
999
1000
1001
1002
1003
1004
1005
1006
1007
1008
1009
1010
1011
1012
1013
1014
1015
1016
1017
1018
1019
1020
1021
1022
1023
1024
1025
1026
1027
1028
1029
1030
1031
1032
1033
1034
1035
1036
1037
1038
1039
1040
1041
1042
1043
1044
1045
1046
1047
1048
1049
1050
1051
1052
1053
1054
1055
1056
1057
1058
1059
1060
1061
1062
1063
1064
1065
1066
1067
1068
1069
1070
1071
1072
1073
1074
1075
1076
1077
1078
1079
1080
1081
1082
1083
1084
1085
1086
1087
1088
1089
1090
1091
1092
1093
1094
1095
1096
1097
1098
1099
1100
1101
1102
1103
1104
1105
1106
1107
1108
1109
1110
1111
1112
1113
1114
1115
1116
1117
1118
1119
1120
1121
1122
1123
1124
1125
1126
1127
1128
1129
1130
1131
1132
1133
1134
1135
1136
1137
1138
1139
1140
1141
1142
1143
1144
1145
1146
1147
1148
1149
1150
1151
1152
1153
1154
1155
1156
1157
1158
1159
1160
1161
1162
1163
1164
1165
1166
1167
1168
1169
1170
1171
1172
1173
1174
1175
1176
1177
1178
1179
1180
1181
1182
1183
1184
1185
1186
1187
1188
1189
1190
1191
1192
1193
1194
1195
1196
1197
1198
1199
1200
1201
1202
1203
1204
1205
1206
1207
1208
1209
1210
1211
1212
1213
1214
1215
1216
1217
1218
1219
1220
1221
1222
1223
1224
1225
1226
1227
1228
1229
1230
1231
1232
1233
1234
1235
1236
1237
1238
1239
1240
1241
1242
1243
1244
1245
1246
1247
1248
1249
1250
1251
1252
1253
1254
1255
1256
1257
1258
1259
1260
1261
1262
1263
1264
1265
1266
1267
1268
1269
1270
1271
1272
1273
1274
1275
1276
1277
1278
1279
1280
1281
1282
1283
1284
1285
1286
1287
1288
1289
1290
1291
1292
1293
1294
1295
1296
1297
1298
1299
1300
1301
1302
1303
1304
1305
1306
1307
1308
1309
1310
1311
1312
1313
1314
1315
1316
1317
1318
1319
1320
1321
1322
1323
1324
1325
1326
1327
1328
1329
1330
1331
1332
1333
1334
1335
1336
1337
1338
1339
1340
1341
1342
1343
1344
1345
1346
1347
1348
1349
1350
1351
1352
1353
1354
1355
1356
1357
1358
1359
1360
1361
1362
1363
1364
1365
1366
1367
1368
1369
1370
1371
1372
1373
1374
1375
1376
1377
1378
1379
1380
1381
1382
1383
1384
1385
1386
1387
1388
1389
1390
1391
1392
1393
1394
1395
1396
1397
1398
1399
1400
1401
1402
1403
1404
1405
1406
1407
1408
1409
1410
1411
1412
1413
1414
1415
1416
1417
1418
1419
1420
1421
1422
1423
1424
1425
1426
1427
1428
1429
1430
1431
1432
1433
1434
1435
1436
1437
1438
1439
1440
1441
1442
1443
1444
1445
1446
1447
1448
1449
1450
1451
1452
1453
1454
1455
1456
1457
1458
1459
1460
1461
1462
1463
1464
1465
1466
1467
1468
1469
1470
1471
1472
1473
1474
1475
1476
1477
1478
1479
1480
1481
1482
1483
1484
1485
1486
1487
1488
1489
1490
1491
1492
1493
1494
1495
1496
1497
1498
1499
1500
1501
1502
1503
1504
1505
1506
1507
1508
1509
1510
1511
1512
1513
1514
1515
1516
1517
1518
1519
1520
1521
1522
1523
1524
1525
1526
1527
1528
1529
1530
1531
1532
1533
1534
1535
1536
1537
1538
1539
1540
1541
1542
1543
1544
1545
1546
1547
1548
1549
1550
1551
1552
1553
1554
1555
1556
1557
1558
1559
1560
1561
1562
1563
1564
1565
1566
1567
1568
1569
1570
1571
1572
1573
1574
1575
1576
1577
1578
1579
1580
1581
1582
1583
1584
1585
1586
1587
1588
1589
1590
1591
1592
1593
1594
1595
1596
1597
1598
1599
1600
1601
1602
1603
1604
1605
1606
1607
1608
1609
1610
1611
1612
1613
1614
1615
1616
1617
1618
1619
1620
1621
1622
1623
1624
1625
1626
1627
1628
1629
1630
1631
1632
1633
1634
1635
1636
1637
1638
1639
1640
1641
1642
1643
1644
1645
1646
1647
1648
1649
1650
1651
1652
1653
1654
1655
1656
1657
1658
1659
1660
1661
1662
1663
1664
1665
1666
1667
1668
1669
1670
1671
1672
1673
1674
1675
1676
1677
1678
1679
1680
1681
1682
1683
1684
1685
1686
1687
1688
1689
1690
1691
1692
1693
1694
1695
1696
1697
1698
1699
1700
1701
1702
1703
1704
1705
1706
1707
1708
1709
1710
1711
1712
1713
1714
1715
1716
1717
1718
1719
1720
1721
1722
1723
1724
1725
1726
1727
1728
1729
1730
1731
1732
1733
1734
1735
1736
1737
1738
1739
1740
1741
1742
1743
1744
1745
1746
1747
1748
1749
1750
1751
1752
1753
1754
1755
1756
1757
1758
1759
1760
1761
1762
1763
1764
1765
1766
1767
1768
1769
1770
1771
1772
1773
1774
1775
1776
1777
1778
1779
1780
1781
1782
1783
1784
1785
1786
1787
1788
1789
1790
1791
1792
1793
1794
1795
1796
1797
1798
1799
1800
1801
1802
1803
1804
1805
1806
1807
1808
1809
1810
1811
1812
1813
1814
1815
1816
1817
1818
1819
1820
1821
1822
1823
1824
1825
1826
1827
1828
1829
1830
1831
1832
1833
1834
1835
1836
1837
1838
1839
1840
1841
1842
1843
1844
1845
1846
1847
1848
1849
1850
1851
1852
1853
1854
1855
1856
1857
1858
1859
1860
1861
1862
1863
1864
1865
1866
1867
1868
1869
1870
1871
1872
1873
1874
1875
1876
1877
1878
1879
1880
1881
1882
1883
1884
1885
1886
1887
1888
1889
1890
1891
1892
1893
1894
1895
1896
1897
1898
1899
1900
1901
1902
1903
1904
1905
1906
1907
1908
1909
1910
1911
1912
1913
1914
1915
1916
1917
1918
1919
1920
1921
1922
1923
1924
1925
1926
1927
1928
1929
1930
1931
1932
1933
1934
1935
1936
1937
1938
1939
1940
1941
1942
1943
1944
1945
1946
1947
1948
1949
1950
1951
1952
1953
1954
1955
1956
1957
1958
1959
1960
1961
1962
1963
1964
1965
1966
1967
1968
1969
1970
1971
1972
1973
1974
1975
1976
1977
1978
1979
1980
1981
1982
1983
1984
1985
1986
1987
1988
1989
1990
1991
1992
1993
1994
1995
1996
1997
1998
1999
2000
2001
2002
2003
2004
2005
2006
2007
2008
2009
2010
2011
2012
2013
2014
2015
2016
2017
2018
2019
2020
2021
2022
2023
2024
2025
2026
2027
2028
2029
2030
2031
2032
2033
2034
2035
2036
2037
2038
2039
2040
2041
2042
2043
2044
2045
2046
2047
2048
2049
2050
2051
2052
2053
2054
2055
2056
2057
2058
2059
2060
2061
2062
2063
2064
2065
2066
2067
2068
2069
2070
2071
2072
2073
2074
2075
2076
2077
2078
2079
2080
2081
2082
2083
2084
2085
2086
2087
2088
2089
2090
2091
2092
2093
2094
2095
2096
2097
2098
2099
2100
2101
2102
2103
2104
2105
2106
2107
2108
2109
2110
2111
2112
2113
2114
2115
2116
2117
2118
2119
2120
2121
2122
2123
2124
2125
2126
2127
2128
2129
2130
2131
2132
2133
2134
2135
2136
2137
2138
2139
2140
2141
2142
2143
2144
2145
2146
2147
2148
2149
2150
2151
2152
2153
2154
2155
2156
2157
2158
2159
2160
2161
2162
2163
2164
2165
2166
2167
2168
2169
2170
2171
2172
2173
2174
2175
2176
2177
2178
2179
2180
2181
2182
2183
2184
2185
2186
2187
2188
2189
2190
2191
2192
2193
2194
2195
2196
2197
2198
2199
2200
2201
2202
2203
2204
2205
2206
2207
2208
2209
2210
2211
2212
2213
2214
2215
2216
2217
2218
2219
2220
2221
2222
222

EXHIBIT "B"

6. Buyer's additional agreed to obligations.

- a. Buyer shall provide, at Buyer's sole expense, a cattle crossing under the Road 4 South extension. The design, construction and installation of the cattle crossing shall be satisfactory to Seller.
- b. Buyer and Seller agree that Seller shall have the responsibility to contract for the construction for a new exempt water well, windmill, stock tank, as well as all required amenities to provide water and ensure access to water for Seller's livestock south of the Road 4 South extension, at Buyer's sole cost and expense.

In addition, Buyer shall be solely responsible for any additional costs which may become necessary, but are initially unknown as a result of construction.

- c. Buyer and Seller agree that Seller shall have the responsibility to contract for the construction of four-strand barbed wire fencing on Buyer's public right-of-way on both sides of the Road 4 South extension public right-of-way and on both sides of Buyer's Peavine Trail public right-of-way and that Buyer shall be solely responsible for the construction and maintenance thereof.
- d. Buyer shall undertake to complete all steps necessary to dedicate the Peavine Trail as a public right-of-way in order to assure Seller will have access rights to Road 4 South as a public right-of-way (road) and to the Peavine Trail right-of-way.
- e. Buyer shall proceed as quickly as possible to complete the "Center Street" extension easterly to the Peavine Trail right-of-way.
- f. Buyer shall be solely responsible for the maintenance of Road 4 South right-of-way extension and for all of the improvements thereto including, but not limited to, the roadway, culverts, and fencing.
- g. Buyer shall have sole responsibility, at Buyer's sole expense, to maintain each and all improvements required hereunder with respect to the Road 4 South extension and the Peavine Trail right-of-way and the Center Street extension.

**INTERGOVERNMENTAL AGREEMENT
BETWEEN TOWN OF CHINO VALLEY, ARIZONA
AND
CITY OF PRESCOTT, ARIZONA
RELATING TO
PAYMENTS FOR THE TRANSPORTATION OF WATER**

PREAMBLE:

This Intergovernmental Agreement (this “Agreement”) is entered into this ____ day of _____, 2013 by and between the Town of Chino Valley, Arizona, a municipal corporation and political subdivision of the State of Arizona (“Chino Valley”) and the City of Prescott, a municipal corporation and political subdivision of the State of Arizona (“Prescott”). Chino Valley and Prescott will sometimes also be referred to in this Agreement individually as “Party” and collectively as “Parties”.

RECITALS:

WHEREAS, Chino Valley is organized as a Town pursuant to Title 9, Arizona Revised Statutes, with the general powers vested by Arizona law, including without limitation, the power to tax, the power to regulate business within the Town, the power to regulate the use of its public roads and other public rights of way and easements and the power to preserve the public safety;

WHEREAS, Prescott is organized as a City pursuant to Title 9, Arizona Revised Statutes, with the general powers vested by Arizona law, including without limitation, the power to withdraw and transport water for utility purposes both within and without the jurisdictional limits of Prescott;

WHEREAS, Prescott transports water it withdraws within and without the jurisdictional limits of Chino Valley through a pipeline or pipelines located within the jurisdictional limits of Chino Valley for the benefit of Prescott and customers served water by Prescott;

WHEREAS, the Tax Code of Chino Valley Tax Code Section 32.25-477 establishes a municipal transaction privilege tax on operating pipeline(s) for transporting water in and through Chino Valley (the “Transportation Tax”);

WHEREAS, disputes arose between the Parties as to the past amounts due and payable by Prescott to Chino Valley under the Transportation Tax which the Parties have resolved pursuant to the Settlement Agreement and Mutual Release entered into on _____, 2013; and

WHEREAS, both parties desire further discussion and coordination related to the effective and efficient distribution and delivery, as well as transportation of water within and through Chino Valley’s municipal jurisdiction; and

WHEREAS, Chino Valley desires to improve water quality, distribution, rates, fire flows and the health, safety and welfare of its citizens; and

WHEREAS, the Parties are authorized by A.R.S. §§11-952, as amended, to enter into an intergovernmental agreement for the provision of services or for joint or cooperative action.

NOW, THEREFORE, in consideration of the promises and consideration described herein, the parties agree as follows:

AGREEMENT:

1. Preamble and Recitals. The foregoing Preamble and Recitals are incorporated in the Agreement as if set forth in full.

2. Purpose. The purpose of this Agreement is to provide an alternative to the Transportation Tax mutually acceptable to the Parties;

3. Effective Date. This Agreement shall be effective as of the date set forth above in the preamble upon all the following occurring:

- a. Approval of this Agreement by both governing bodies as reflected by the copy of such actions to be attached hereto as Exhibit A;
- b. Approval as to form by the attorney for each Party;
- c. Execution by an authorized officer of each Party.

4. Term. This Agreement shall begin on the Effective Date and shall remain in effect for five (5) calendar years after the repeal of Chino Valley's Transportation Tax, unless sooner terminated, replaced or superseded by mutual written agreement of the Parties as provided by Paragraph 8 below.

5. Conversion from Transportation Tax to Payment of Transportation Fees: Chino Valley agrees that it will seek to repeal the Transportation Tax immediately subsequent to the effective date of this Agreement. Prescott agrees that if and when Chino Valley repeals the Transportation Tax, commencing with the last day the Transportation Tax applies and continuing thereafter throughout the term of this Agreement, Prescott shall annually pay to Chino Valley \$9.38 per acre-foot (the "Transportation Fee") for all water transported through Prescott's pipelines located within the jurisdictional boundaries of Chino Valley, for delivery outside the jurisdictional boundaries of Chino Valley. Said \$9.38 per acre-foot unit fee shall not change across the term of this agreement.

6. Calculation of Transported Water: Prescott will report official ADWR volume reports on all Prescott facilities within Chino Valley's jurisdictional boundary to Chino Valley, as evidence of the water volumes so pumped as mutually agreed in writing. Annual ADWR volumes for the preceding calendar year shall be reported to Chino Valley no later than February 1st each year. Water volumes delivered to Prescott's water customers within the jurisdictional boundary of Chino Valley shall be reported to the Town of Chino Valley no later than February

1st each year, and shall not be subject to the Transportation Fee. Unless otherwise mutually agreed in writing, Chino Valley shall annually bill Prescott for the amount of water transported during the prior calendar year and Prescott shall pay Chino Valley the billed amount within sixty (60) days of the billing date. The joint or cooperative undertakings hereunder shall be financed through the normal budget processes of the Parties.

7. Agreement Subject to Appropriation. This Agreement is subject to the provisions of ARIZ. CONST. Art. IX, § 5 and ARIZ. REV. STAT. § 42-17106. Prescott acknowledges that it has budgeted, and in good faith intends to continue to budget such funds annually as may be needed to fulfill its obligations under this Agreement and shall keep Chino Valley fully informed as to the availability of funds for the Agreement.

8. Termination. This Agreement may be terminated prior to the end of its term upon mutual written agreement of the Parties.

9. Indemnification. To the extent permitted by law, each Party (as “Indemnitor”) agrees to indemnify, defend and hold harmless the other Party (as “Indemnitee”) from and against any and all claims, losses, liability, costs, or expenses (including reasonable attorney’s fees) (hereinafter collectively referred to as “Claims”) arising out of bodily injury of any person (including death) or property damage, but only to the extent that such Claims which result in vicarious/derivative liability to the Indemnitee are caused by the act, omission, negligence, misconduct, or other fault of the Indemnitor, its officers, officials, agents, employees or volunteers related to performance of obligations under this Agreement. In no event, shall such indemnification extend beyond the actual out of pocket loss of the Indemnitee, and subject to any limitations on recovery voluntarily agreed to by the Indemnitee.

10. Insurance Requirements. This Agreement shall not require either Party to carry any additional insurance of any kind.

11. Notices. All notices given or to be given, by either party to the other, shall be given in writing, by certified mail, and shall be addressed to the parties at the addresses hereinafter set forth, or at such other address as the parties may by written notice hereafter designate. All notices shall be deemed received upon actual receipt or three (3) business days after deposit in the United States mail, whichever date is earlier. Notices shall be addressed as follows:

For Chino Valley to: Town Manager
Town of Chino Valley
202 North State Route 89
Chino Valley, Arizona 86323

For Prescott to: City Manager
City of Prescott
201 S. Cortez St.
Prescott, Arizona 86303

12. Waiver. No action or failure to act by Chino Valley or Prescott shall constitute a waiver of any right or duty afforded either party under this Agreement, nor shall any action or failure to act constitute an approval of acquiescence in any breach thereunder, except as may be specifically agreed to in writing.

13. Severability. In the event any term or provision of this Agreement is held to be invalid or unenforceable, the validity of the other provisions shall not be affected, and the Agreement shall be construed and enforced as if it did not contain the particular term or provision that is deemed to be invalid or unenforceable.

14. Headings. Headings used in this Agreement are intended for convenience or reference only and shall not control or affect the meaning or construction of any provision of this Agreement.

15. Events of Default. A Party shall be in default of this Agreement upon the occurrence of any of the following, subject to complying with Section 7.4 above:

- a. The failure to make, when due, any payment required pursuant to this Agreement;
or
- b. The failure to perform any material covenant or obligation set forth in this Agreement.

16. Modification. This Agreement may be modified only by mutual written agreement of the parties.

17. Governing Law. This Agreement will be governed by the laws of the State of Arizona, both as to interpretation and performance.

18. Venue. Any action at law, suite in equity or judicial proceeding for the enforcement of this Agreement or any provision thereof will be instituted only in the courts of Maricopa County, State of Arizona.

19. Settlement of Disputes; Remedies; Attorneys Fees. Prior to instituting any action to enforce the terms of this agreement, there shall first be a written a request for a meeting to attempt to settle any dispute concerning this Agreement or the duties and obligations created by it. The request shall set forth the nature of the dispute, the action that needs to be taken to address the dispute and that the request in being made pursuant to this Agreement. Unless otherwise agreed in writing, the failure of the Parties designated representatives to meet and resolve the matter so identified within thirty (30) days of providing the written request for a meeting, either Party may pursue any and all remedies available at law or equity associated with the dispute identified in the meeting request. 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, then all litigation and collection expenses, witness fees, court costs and reasonable attorneys' fees shall be paid to the prevailing party. Nothing herein shall preclude (a) the Parties from mutually agreeing in writing to pursue binding or non-binding mediation or arbitration to resolve any dispute arising under this Agreement or (2) taking such

actions as reasonably deemed necessary to preserve the public health or safety or to prevent irreparable harm.

20. Nondiscrimination. To the extent applicable to the Parties and this Agreement, if at all, Chino Valley and Prescott agree to comply with all provisions of applicable federal, state and local laws related to non-discrimination, equal employment opportunity, the Americans with Disabilities Act, and Executive Order No. 75-5, dated April 28, 1975, as amended by Arizona Governor's Executive order 99-4, dated January 29, 1999, as may be amended from time to time.

21. E-Verify, Records and Audits. To the extent applicable under Arizona Revised Statutes Section 41-4401, the Parties and their respective subcontractors used in the furtherance of this Agreement warrant compliance with all federal immigration laws and regulations that relate to their employees and compliance with the E-verify requirements under Arizona Revised Statutes Section 23-214(A). The Parties' or a subcontractor's breach of the above-mentioned warranty shall be deemed a material breach of this Agreement and may result in the termination of this Agreement by either Party under the terms of this Agreement. The Parties each retain the legal right to randomly inspect the papers and records of the other Party and the other Party's subcontractors who work under this Agreement to ensure that the other Party and its subcontractors are complying with the above-mentioned warranty. The Parties warrant they will keep their respective papers and records open for random inspection during normal business hours by the other Party. The Parties and their respective subcontractors shall cooperate with the other Party's random inspections including granting the inspecting Party entry rights onto their respective properties to perform the random inspections and waiving their respective rights to keep such papers and records confidential.

22. Provisions Required by Law. Each and every provision of law and any clause required by law to be in the Agreement will be read and enforced as though it were included herein and, if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon the application of either Party, the Agreement will promptly be physically amended to make such insertion or correction.

23. Relationship of the Parties. Each Party is acting in its individual capacity and not as an agent, employee, partner, joint venturer, or associate of the other. An employee or agent of one Party performing any obligation or duty under this Agreement shall not be deemed or construed to be the employee or agent of the other for any purpose whatsoever.

24. Conflict of Interest. This Agreement is subject to cancellation pursuant to the provisions of A.R.S. § 38-511.

25. Entire Agreement; Interpretation; Parol Evidence. This Agreement represents the entire agreement of the Parties with respect to its subject matter, and all previous agreements, whether oral or written, entered into prior to this Agreement are hereby revoked and superseded by this Agreement. No representations, warranties, inducements or oral agreements have been made by the Parties except as expressly set forth herein, or in any other contemporaneous written agreement executed for the purposes of carrying out the provisions of this Agreement. This Agreement shall be construed and interpreted according to its plain meaning, and no presumption

shall be deemed to apply in favor of, or against the Party drafting the Agreement. The Parties acknowledge and agree that each has had the opportunity to seek and utilize legal counsel in the drafting of, review of, and entry into this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement on the date first written above.

FOR CITY OF PRESCOTT:

FOR THE TOWN OF CHINO VALLEY:

Hon. Marlin D. Kuykendall
Mayor

Hon. Chris Marley
Mayor

Date: _____

Date: _____

ATTEST:

ATTEST:

Lynn Mulhall
City Clerk

Jami Lewis
Town Clerk

ATTORNEY DETERMINATION

In accordance with the requirements of A.R.S. § 11-952(D), each of the undersigned attorneys acknowledges that: (1) he reviewed the above Agreement on behalf of his client; and, (2) as to his respective client only, each attorney has determined that this Agreement is in proper form and is within the powers and authority granted under the laws of the State of Arizona.

Jon M. Paladini
City Attorney for City of Prescott

Curtis, Goodwin, Sullivan, Udall & Schwab, P.L.C.
Town Attorney for Town of Chino Valley

Date: _____

Date: _____