



Town of Chino Valley

MEETING NOTICE TOWN COUNCIL

**SPECIAL MEETING
Thursday, October 17, 2013
6:05 P.M.**

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

AGENDA

- 1) **CALL TO ORDER; ROLL CALL**
- 2) 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)
- 3) Consideration and possible action to approve either or both a revised 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)
- 4) **ADJOURNMENT**

Dated this 16th day of October, 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



TOWN OF CHINO VALLEY COUNCIL AGENDA ITEM STAFF REPORT

Town Council Special Meeting

Meeting Date: 10/17/2013

Contact Person/Dept: Robert Smith, Town Manager

Department: Town Manager

**Estimated length
of staff presentation:** None

Information

AGENDA ITEM TITLE:

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)

Attachments

**Selmer D. Lutey, P.L.L.C.
Of Counsel to**

148 N. Summit Avenue
Prescott, Arizona 86301
Email: slutev@awestoffice.net

Office: 928-445-5055
Facsimile: 928-445-7557

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.

Page 3

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.

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 ____ day of _____, 2013, by
RONALD E. JAMES, Managing Member of James Deep Well Ranches #1, L.L.C., an Arizona limited liability company.

Page 4

Notary Public

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

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

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 5

EXHIBIT "A"
Legal Description

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.
- 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.
- 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.
- h. The amount of reimbursement by Buyer to Seller for construction of the improvements set forth herein shall not exceed \$ 55,000.

REAL ESTATE PURCHASE CONTRACT
(Right-of-Way)

The parties to this Real Estate Purchase Contract (the "Contract") are James Deep Well Ranches #1, an Arizona limited liability company (hereinafter "Seller") and the Town of Chino Valley, Arizona, a municipal corporation organized under the laws of the State of Arizona (hereinafter "Buyer"). Seller agrees to sell and Buyer agrees to purchase certain real property (the "Property") under the terms and conditions set forth below:

1. LEGAL DESCRIPTION

The Property to be conveyed by Seller to Buyer under this Contract consists of 8.569 acres of land located in Yavapai County, Arizona, as legally described in Exhibit A, attached hereto and made a part hereof.

2. PURCHASE PRICE

2.1. The Purchase Price for the Property shall be \$ 171,380.00 in the form of cash or other good funds or cashier's or certified check to be deposited with Escrow Agent on or before the Close of Escrow.

2.2 Earnest Money. Buyer shall make an initial deposit into escrow of \$21,380.00 within three (3) days of notification from Escrow Agent of his receipt of a fully executed Purchase Contract. This initial deposit shall be applied to the Purchase Price, with the remaining balance of the Purchase Price as adjusted in accordance with Paragraph 2.1 to be paid to the Escrow Agent for benefit of Seller on or before Close of Escrow.

2.3 Cost of Improvements. In addition to the Purchase Price, Buyer shall install certain improvements on behalf of Seller and Buyer shall reimburse Seller for Seller's installation of certain improvements, all as described in Exhibit B. Reimbursement to Seller of the improvements installed by Seller ("Seller's Improvements") shall be for the actual cost of improvements ("Actual Improvement Costs") and shall not exceed \$55,000. Prior to Close of Escrow, Seller shall provide Buyer with a reasonable estimate of the cost of the Improvements to be installed by Seller and reimbursed by Buyer ("Improvements Estimate"). If the Improvements Estimate exceeds \$55,000, and Buyer determines that the Improvements Estimate is reasonable, this Contract may be amended to allow an increased amount not to exceed.

2.3.1 Upon completion of the Seller's Improvements, Seller shall provide Buyer with an itemized invoice and supporting documentation of the actual cost of Seller's Improvements ("Actual Improvements Cost") in writing. Buyer shall then reimburse Seller for the Actual Improvements Cost not to exceed \$55,000.

2.3.2 If, in the opinion of Buyer, said Actual Improvements Cost is unreasonable for the improvements installed, Buyer and Seller agree to participate in good faith in nonbinding mediation to settle the dispute. Should mediation fail to resolve the dispute, either party may pursue such other legal remedies as may be appropriate.

2.4 Escrow Agent. All payments of the Purchase Price and Cost of Improvements set forth above shall be deposited with Yavapai Title Agency, Attn: Connie Allmon, Escrow Officer, 123 North Montezuma Street, Prescott, Arizona 86303, serving as Escrow Agent on or before Close of Escrow. Any additional payments for Costs of Improvements made pursuant to Paragraph 2.3 and Exhibit B shall be made directly from Buyer to Seller within fifteen (15) days of receipt of an invoice therefor in accordance with Paragraph 2.3.

2.5 The parties hereby acknowledge and agree that this transaction does NOT constitute an open market, arm's length transaction between a typically motivated buyer and seller for the following reasons:

2.5.1. This sale has been undertaken in lieu of and under the threat of condemnation, and the purchase price is, therefore, influenced by consideration by both the buyer and seller of avoiding litigation expenses and delays.

2.5.2 This sale is a "special needs" transaction in which the Buyer is purchasing land of special value and utility solely to Buyer due to its size, location and relationship to other municipal property and/or improvements and to satisfy a contractual requirement of Buyer with a third party who is not a party to this Contract.

2.5.3 The purchase price stated herein includes consideration being paid by Buyer for concessions unrelated to the value of the property being transferred.

3. BROKERAGE COMMISSION

Seller has represented himself, and has not been represented by a real estate broker, agent or agency to market and sell the Property. Seller is solely responsible for compensating costs contained within any agreements, and hereby indemnifies Buyer against any claim for commission (including all costs and attorneys' fees expended in defending against such claim) arising from or related to the transaction set forth in this Contract. This indemnity shall survive termination of this Contract.

4. RISK OF LOSS

Except as otherwise provided in this Contract, all risk of loss related to ownership and possession of the Property, including liability to third persons, shall be the responsibility of the Seller until the title and possession of the Property passes to the Buyer at Close of Escrow. Seller shall indemnify and hold Buyer harmless for all such loss, damage, liability, fees or costs of any kind whatsoever, except those caused by the Buyer. This indemnity shall survive termination of this Contract.

5. CLOSING COSTS AND PRORATIONS

5.1 Buyer will pay all escrow fees related to the sale of the Property. Escrow Agent shall issue or cause to be issued a standard owner's policy of title insurance in the amount of the purchase price and naming Buyer as the insured. Buyer shall bear the cost of such title policy. Seller shall be responsible for all property taxes and assessments levied and due against the Property prior to closing. Buyer shall be responsible for all taxes and assessments levied against the Property after the closing date.

5.2 All of the above-referenced costs that are the responsibility of Buyer shall be paid into escrow on or before the Close of Escrow in addition to the purchase price. All costs that are the responsibility of Seller as referenced above shall be paid from the proceeds of the sale price to which Seller is entitled.

6. TITLE WARRANTY; CONVEYANCE OF TITLE

6.1 Fee Simple absolute title to the Property shall be transferred by Seller to Buyer at the Close of Escrow by General Warranty Deed, which shall include conveyance of all surface and ground water rights related to the Property. Buyer is only obligated to accept title to the Property at Close of Escrow if (1) the Property shall be free and clear of all defects, exceptions, easements, covenants, conditions, restrictions, mining claims, liens and encumbrances; and (2) Buyer, at its sole discretion, is otherwise satisfied with the condition of title as reflected in the above-referenced title report and policy and any investigation made by Buyer pursuant to Paragraph 7. Buyer shall have until Close of Escrow to file its objections to the condition of title.

6.2 Escrow Agent shall issue or cause to be issued a standard owner's policy of title insurance in the amount of the Purchase Price, for which Buyer shall bear the cost.

7. INVESTIGATIONS

7.1 Buyer shall have thirty (30) days from opening of escrow to make such investigations of the Property as Buyer deems necessary to assure Buyer that the Property is suitable for Buyer's intended purposes and that no hazardous wastes or substances are located on or under the Property.

7.2 Buyer shall have access to the Property at times agreed to by the Parties for the purpose of inspections and investigation. Should Buyer disturb any condition of the Property, Buyer shall restore it to its prior condition, unless otherwise agreed to in writing by Seller. Buyer shall indemnify and hold Seller harmless from and against any and all claims arising as a result of Buyer's inspection unless such injury, damage or liability is caused by Seller's negligent, reckless or intentional act.

8. CLOSE OF ESCROW

Close of Escrow shall occur on or before October 30, 2013, or as otherwise agreed in writing by the Parties. Close of Escrow will be at the offices of the Escrow Agent set forth in Paragraph 2.4 herein. At the Close of Escrow, both the title to and possession of the Property

shall be transferred from Seller to Buyer. Any encumbrances existing against the Property at the Close of Escrow, including accrued taxes and insurance shall be satisfied from the proceeds of the sale price.

9. RIGHT TO ENCUMBER

The Property is to be free and clear of all liens and encumbrances not acceptable to Buyer at the time of transfer of title from Seller to Buyer. Seller shall not voluntarily encumber the Property after execution of this Contract. Seller agrees that all encumbrances existing against the Property at Close of Escrow shall be satisfied from the proceeds of the sale.

10. ENVIRONMENTAL LIABILITY

Seller makes no representations as to the environmental condition of the Property. Buyer is purchasing the Property "as-is", "where-is", and with any and all faults.

11. ASSIGNABILITY

Neither Seller nor Buyer may assign any of its rights or obligations under this Contract without the other party's advance written consent. This Contract shall be binding upon Seller and Buyer and their respective successors and assigns.

12. DEFAULT

12.1 Default by Seller: All provisions of this Contract are hereby deemed to be material. Buyer shall have all rights and remedies available to it under Arizona law should Seller breach any of the provisions under this Contract. Buyer shall immediately be entitled to the return of all amounts it paid pursuant to the Contract, including the Earnest Money Deposit, and to terminate the Contract, to damages and to specific performance by Seller, should Seller breach any provision of this Contract. The terms of this Contract shall not in any way be construed as a waiver of Buyer's rights, as a municipal corporation, to obtain the Property by condemnation or eminent domain should Seller fail to perform their obligations under this Contract.

12.2 Default by Buyer: All provisions of this Contract are hereby deemed to be material. The parties agree that Seller's remedies for Buyer's breach of this Contract shall be such rights and remedies available to it under Arizona law, including retention of the Earnest Money Deposit as liquidated damages.

12.2.1 The breaching party shall be responsible to pay all escrow costs and fees related to this Contract.

12.2.2 The prevailing party shall be entitled to an award of all costs and attorneys' fees incurred should legal action be necessary by either party to enforce the terms of this Contract.

13. SUPERSEDING AGREEMENT

This Contract constitutes the entire contract of the parties relating to the Property and the parties agree that the terms of this Contract shall supersede all previous oral and written Contracts between them.

14. MODIFICATION

The terms of this Contract may only be modified upon written approval of all parties to this Contract.

15. ARIZONA LAW

Seller and Buyer both acknowledge that this Contract is executed in Yavapai County, Arizona, and relates to property located in Yavapai County, Arizona. Should legal action be necessary to enforce the terms of this Contract, all parties agree that the laws of the State of Arizona shall apply. All parties agree that the proper venue for any lawsuit shall be Yavapai County, Arizona.

16. AMBIGUITY

This Contract was drafted by the Town with the assistance of its attorneys. Neither the Town nor its attorneys at the law firm of Curtis, Goodwin, Sullivan, Udall & Schwab, P.L.C. have rendered legal or other advice to Seller regarding sale of the subject property or the specific terms of this Purchase Contract. Seller is aware of its right to obtain independent professional and/or legal assistance with this Contract and, upon signing of the Contract, represents that it has taken all steps it deems necessary (including but not limited to, seeking the advice of professionals and/or attorneys) to assist it with this transaction. Consequently, the ambiguity in this Contract shall not be construed against either party.

17. CONFLICT OF INTEREST

Seller recognizes that Buyer is a political subdivision of the State of Arizona. Pursuant to A.R.S. § 38-511, Buyer may cancel this Contract within three (3) years after its execution without penalty or further obligation if any person significantly involved in initiating, negotiating, securing, drafting or creating this Contract on behalf of Buyer is, at any time while the Contract or any extension thereof is in effect, an employee or agent of Seller in any capacity or a consultant to Seller with respect to the subject matter of this Contract. Notice of any such cancellation shall be given by Buyer to Seller with respect to the subject matter of this Contract. Notice of any such cancellation shall be given by Buyer to Seller pursuant to the terms of A.R.S. § 38-511. Should cancellation occur under this provision, Seller shall return to Buyer all moneys paid by Buyer under this Contract. Additionally, Seller shall be responsible for payment of all escrow fees. Buyer shall convey back the Property to Seller.

18. AUTHORITY TO EXECUTE

Seller and Buyer both acknowledge that the persons whose signatures appear below have appropriate authority to execute this Contract on behalf of Seller and Buyer. This Contract may be executed in several counterparts, which together shall constitute an original.

19. NOTICES

Notices required or permitted by this Contract shall be given in writing and personally delivered or sent by first class mail, postage prepaid to:

Seller:

James Deep Well Ranches #1 LLC
c/o Selmer D. Lutey
Selmer D. Lutey, PLLC
148 North Summit Avenue
Prescott, Arizona 86301

Buyer:

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

With a copy to:

Curtis, Goodwin, Sullivan, Udall & Schwab, PLC
Town Attorney
501 East Thomas Road
Phoenix, Arizona 85012

ACCEPTED BY:

DATE: _____, 2013

SELLER:
JAMES DEEP WELL RANCHES #1 LLC

BUYER:
TOWN OF CHINO VALLEY, ARIZONA
a municipal corporation

Ronald D. James, Managing Member

Chris Marley, Mayor

ATTEST:

Jami Lewis, Town Clerk

APPROVED AS TO FORM:

Curtis, Goodwin, Sullivan, Udall &
Schwab, PLC, Town Attorney

By:_____

DRAFT

EXHIBIT A

LEGAL DESCRIPTION

DRAFT

EXHIBIT B

IMPROVEMENTS

1. 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 as approved in writing by Seller. Said approval shall not unreasonably be withheld. Seller shall be given notice of requested approval in writing and, within ten (10) days of receipt thereof shall provide either approval or request for revisions thereto. Failure of Seller to reply to requests for approval within the required timeframe shall be deemed by Buyer as approval.
2. Seller shall be responsible for construction and installation of the following Improvements, the reasonable costs of which (in an amount not to exceed \$55,000) shall be reimbursed by Buyer, as set forth in Section 2.3 of the Purchase Contract:
 - a. A new exempt water well, windmill, stock tank, and necessary amenities to provide water and ensure access to water for Seller's livestock south of the Road 4 South extension;
 - b. Four-strand barbed wire fencing located on and along the public right-of-way on both sides of the Road 4 South extension.
3. Maintenance of the well, windmill, stock tank, and necessary amenities shall be the sole responsibility of Seller, who shall bear all costs thereof.
4. Maintenance of the barbed wire fencing within the Buyer's right-of-way shall be the responsibility of Buyer, who shall bear all costs thereof.
5. Buyer shall dedicate the Peavine Trail as public right-of-way.
6. Buyer shall proceed as quickly as possible to complete the "Center Street" extension easterly to Peavine Trail.
7. Buyer shall be solely responsible for maintenance of Road 4 South extension, Peavine Trail and Center Street extensions and for all improvements thereto, including roadway, culverts and fencing.