



TOWN COUNCIL NOTICE & AGENDA

**EXECUTIVE SESSION
TUESDAY, NOVEMBER 12, 2024
5:00 PM**

COUNCIL CHAMBERS | 202 N. STATE ROUTE 89 | CHINO VALLEY, ARIZONA 86323

AGENDA

- 1. CALL TO ORDER; ROLL CALL**
- 2. An executive session for discussion and consultation with the Town Attorney for legal advice pursuant to A.R.S. §38-431.03(A)(3); for discussion and consideration of employment, assignment, appointment, or promotion regarding filling the Town Manager position pursuant to A.R.S. §38-431.03(A)(1).**
- 3. ADJOURNMENT**



TOWN COUNCIL NOTICE & AGENDA

**REGULAR MEETING
TUESDAY, NOVEMBER 12, 2024
6:00 PM**

COUNCIL CHAMBERS | 202 N. STATE ROUTE 89 | CHINO VALLEY, ARIZONA 86323

A majority of the Councilmembers may attend a private invocation in the Council Conference Room immediately prior to the Council meeting. No Town business will be discussed.

AGENDA

- 1. CALL TO ORDER; PLEDGE OF ALLEGIANCE; ROLL CALL**
- 2. INTRODUCTIONS, PRESENTATIONS, AND PROCLAMATIONS**
 - a. Presentation of Proclamation declaring November 30, 2024, as Small Business Saturday.**
- 3. CALL TO THE PUBLIC - Individuals requesting to speak, please complete a Speaker Comment Card and return to the Clerk.**

Call to the Public is an opportunity for the public to address the Council on any issue within the jurisdiction of the Council that is not on the agenda. Public comment is at the discretion of the Council and not required by law. Individuals are limited to speak for three (3) minutes, yielding of time will not be permitted. 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. Disrespectful behavior will not be tolerated; this includes loud outbursts, profanity, and disruptive discussions among our audience.

4. 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. If listed below, there may also be a presentation on information requested by the Mayor and Council and questions may be answered. No action will be taken.

- a. Status reports by Mayor and Council regarding current events.
- b. Status report by Acting Town Manager Terri Denemy regarding Town accomplishments, and current or upcoming projects.

5. 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 Resolution 2024-1275 regarding regional water solutions engagement with neighboring entities.

6. ACTION ITEMS

The Council may vote to recess the public meeting and hold an Executive Session on any item on this agenda pursuant to A.R.S. § 38-431.03(A)(3) for the purpose of discussion or consultation for legal advice with the Town Attorney. Executive sessions are not open to the public and no action may be taken in executive sessions.

- a. Consideration and possible action to approve the First Amendment to the License and Concession Agreement with Compass Training Center AZ regarding adding three action bays to the Chino Valley Shooting Facility.

Recommended Action: Approve the First Amendment to the License and Concession Agreement with Compass Training Center AZ.

- b. Consideration and possible action to approve a Professional Services Agreement with Montgomery & Associates for a wellhead capture and protection study for an amount not to exceed \$25,000.

Recommended Action: Approve the Professional Services Agreement with Montgomery & Associates for a wellhead capture and protection study for an amount not to exceed \$25,000.

- c. Consideration and possible action to adopt Ordinance No. 2024-948 authorizing the acquisition of certain real property for use as a municipal cemetery.

Recommended Action: Approve Ordinance No. 2024-948.

- d. Consideration and possible action to approve the Town Manager Employment Agreement with Terri Denemy.

Recommended Action: Approve the Town Manager Employment Agreement with Terri Denemy.

7. ADJOURNMENT

Dated this 7th day of November, 2024.

By: *Erin N. Deskins, Town Clerk*

The Town of Chino Valley endeavors to make all public meetings accessible to persons with disabilities. Please call 928-636-2646 (voice) or 711 (Telecommunications Arizona Relay Service) 48 hours prior to the meeting to request reasonable accommodation to participate in this meeting.

Council meetings are live-streamed on Town of Chino Valley Facebook page.

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: _____

Erin N. Deskins, Town Clerk



TOWN COUNCIL AGENDA ITEM STAFF REPORT

AGENDA ITEM # 2a
MEETING DATE: 11/12/2024
CONTACT PERSON: Terri Denemy, Town Manager
ITEM TYPE: Proclamation

AGENDA ITEM TITLE:

Presentation of Proclamation declaring Saturday, November 30, 2024, as Small Business Saturday.

ATTACHMENTS:

1.	2024 Small Business Saturday Proclamation
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PROCLAMATION

Small Business Saturday - November 30, 2024

Whereas, the government of Chino Valley, Arizona, celebrates our local small businesses and the contributions they make to our local economy and community; and

Whereas, according to the United States Small Business Administration, there are 34.7 million small businesses in the United States, small businesses represent 99.7% of firms with paid employees, small businesses are responsible for 61.1% of net new jobs created since 1995, and small businesses employ 45.9% of the employees in the private sector in the United States; and

Whereas, 68 cents of every dollar spent at a small business in the United States stays in the local community and every dollar spent at small businesses creates an additional 48 cents in local business activity as a result of employees and local businesses purchasing local goods and services; and

Whereas, 59% of United States consumers aware of Small Business Saturday shopped or ate at a small, independently-owned retailer or restaurant on Small Business Saturday 2023; and

Whereas, Chino Valley, Arizona supports our local businesses that create jobs, boost our local economy, and preserve our communities; and

Whereas, advocacy groups, as well as public and private organizations, across the country have endorsed the Saturday after Thanksgiving as Small Business Saturday.

Now, Therefore, I, Jack Miller, Mayor of Chino Valley, Arizona, do hereby proclaim November 30, 2024, as **SMALL BUSINESS SATURDAY** and urge the residents of our community, and communities across the country, to support small businesses and merchants on Small Business Saturday and to Shop Small throughout the year.

In Witness Whereof, I have hereunto set my hand and caused the Seal of the Town of Chino Valley to be affixed this 12th day of **November 2024**.



Jack Miller, Mayor

ATTEST: Erin N. Deskins, Town Clerk



TOWN COUNCIL AGENDA ITEM STAFF REPORT

AGENDA ITEM # 5a
MEETING DATE: 11/12/2024
CONTACT PERSON: Terri Denemy, Acting Town Manager
ITEM TYPE: Action Item

AGENDA ITEM TITLE:

Consideration and possible action to approve Resolution 2024-1275 regarding regional water solutions engagement with neighboring entities.

SUMMARY:

In 1999, the State of Arizona determined that the Prescott Active Management Area (Prescott AMA) was found not to be in safe-yield because the Little Chino and Upper Agua Fria Subbasins were over-drafting groundwater and in need of sustainable groundwater management. Despite having the highest set of laws, rules, policies, and plans, groundwater overdraft in the Prescott AMA continues to increase annually and now exceeds 21,000 AF annually, causing groundwater wells and lands to become permanently dry, adversely impacting Del Rio Springs, and decreasing the baseflows of the Upper Verde River.

The City of Prescott, Town of Prescott Valley, Town of Chino Valley, and Yavapai County have governing jurisdictions within the Prescott AMA. All jurisdictions are highly invested in long-term effective water security within their jurisdictions. However, the challenges facing the region are bigger than any jurisdiction's capabilities and extend beyond their corporate boundaries. The Town of Chino Valley Mayor and Council desire to establish a regional steering committee comprising representatives of the regional governments and other relevant stakeholders to explore creating a regional organization or authority that could collectively and collaboratively achieve safe yield in the Prescott AMA and sustain the historic baseflows of the Upper Verde River.

PREVIOUS ACTION:

STAFF RECOMMENDATION:

Approve Resolution 2024-1275 regarding regional water solutions engagement with neighboring entities.

FISCAL IMPACT?

N/A

ATTACHMENTS:

1.	RES 2024-1275 - Regional Discussions (002)(6359122.2)
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RESOLUTION NO. 2024-1275

A RESOLUTION OF THE MAYOR AND COMMON COUNCIL OF THE TOWN OF CHINO VALLEY, ARIZONA, EXPRESSING ITS DESIRE FOR AN INTERGOVERNMENTAL AGREEMENT AMONG THE REGIONAL GOVERNMENTS TO ESTABLISH A REGIONAL STEERING COMMITTEE AND EXPLORE CREATING A REGIONAL ORGANIZATION OR AUTHORITY CHARGED WITH IMPROVING THE REGIONAL GOVERNMENTS' WATER SECURITY.

WHEREAS, the City of Prescott, Town of Prescott Valley, Town of Chino Valley, and Yavapai County (collectively, the "Regional Governments") have governing jurisdictions within the Little Chino and Upper Agua Fria Subbasins, also known as the Prescott Active Management Area (the "Prescott AMA"); and

WHEREAS, in 1999, the State created the Prescott AMA because the Little Chino and Upper Agua Fria Subbasins were out of safe yield and in need of sustainable groundwater management; and

WHEREAS, despite having relatively heavy regulations, groundwater overdraft in the Prescott AMA exceeds 21,000 AF annually, adversely impacting Del Rio Springs and decreasing the baseflows of the Upper Verde River; and

WHEREAS, cooperation among the Regional Governments is essential to achieving safe yield in the Prescott AMA and sustaining the historic baseflows of the Upper Verde River; and

WHEREAS, the Mayor and Common Council of the Town of Chino Valley (the "Town Council") desires to establish a regional steering committee comprising representatives of the Regional Governments and other relevant stakeholders (the "Committee") to explore creating a regional organization or authority focused on collaboratively achieving safe yield in the Prescott AMA and sustaining the historic baseflows of the Upper Verde River.

NOW, THEREFORE, BE IT RESOLVED by the Mayor and Common Council of the Town of Chino Valley, Arizona, as follows:

SECTION 1. The recitals above are hereby incorporated as if fully set forth herein.

SECTION 2. The Town Council hereby expresses its desire for an intergovernmental agreement among the Regional Governments to establish the Committee and explore creating a regional organization or authority focused on collaboratively achieving safe yield in the Prescott AMA and sustaining the historic baseflows of the Upper Verde River.

SECTION 3. The Town Council hereby offers to provide the governing boards of the other Regional Governments a presentation by the Town's water advisor regarding the pressing need for the Committee.

SECTION 4. The Town Council hereby offers to contribute actual or in-kind funding or other resources to help recruit a professional facilitator and staff proficient in water resources to provide administrative support for the Committee and assistance with creating a final report and presentation regarding the Committee's efforts to be shared with the Regional Governments.

SECTION 5. The Mayor, the Town Manager, the Town Clerk, and the Town Attorney are hereby authorized and directed to take all steps necessary to carry out the purpose and intent of this resolution.

PASSED AND ADOPTED by the Mayor and Common Council of the Town of Chino Valley, Arizona, this 12th day of November 2024.

Jack Miller, Mayor

ATTEST:

Erin Deskins, Town Clerk

APPROVED AS TO FORM:

Andrew McGuire, Town Attorney

I hereby certify that the above foregoing Resolution No. 2024-1275 was duly passed by the Council of the Town of Chino Valley, Arizona, at a regular meeting held on November 12, 2024, and that quorum was present thereat and that the vote thereon was ____ ayes, ____ nays, and ____ abstentions. ____ Council members were absent or excused.

Erin Deskins, Town Clerk



TOWN COUNCIL AGENDA ITEM STAFF REPORT

AGENDA ITEM # 6a
MEETING DATE: 11/12/2024
CONTACT PERSON: Terri Denemy, Acting Town Manager
ITEM TYPE: Action Item

AGENDA ITEM TITLE:

Consideration and possible action to approve the First Amendment to the License and Concession Agreement with Compass Training Center AZ regarding adding three action bays to the Chino Valley Shooting Facility.

SUMMARY:

The Town owns the facility commonly known as the Chino Valley Shooting Facility consisting of approximately 40 acres of real property. In 2019, the Town solicited the services of an experienced entity to operate the Facility, pursuant to a request for proposals. Compass Training Center Arizona responded to the RFP by submitting a proposal to manage and operate the facility. On July 1, 2019, the Town and Compass Training Center AZ entered into License and Concessionaire Agreement for management of the Chino Valley Shooting Facility. This initial term of the Agreement was effective until May 27, 2029. After the expiration of the Initial Term, this Agreement may automatically renew for up to five successive one-year terms.

Compass Training Center Arizona has successfully operated and expanded the facility over the term of the agreement, resulting in increased traffic and membership, and becoming a valued asset in our community. Most recently, Compass held a ribbon cutting on August 1, 2024, for their new building with offices and retail store on the site and celebrating their 5-Year Anniversary. It is important to note that Compass has been able to realize this and other site improvements and expanded offerings in the range without the use of Town funds. Their ability to fund-raise and collaborate has been a cornerstone of their success.

Compass Training Center AZ wishes to continue to expand facilities and operations through the pursuit of grants and other private funding and partnership opportunities. Grant applications are competitive, and a longer lease term is often required or would be favorably viewed by granting organizations. For this reason, Compass is requesting, and staff is recommending extending the lease term to June 30, 2034. Additionally, Compass desires to enter a partnership with Granite Mountain Outlaws for the construction of additional bays. This amendment authorizes the Concessionaire to, at the Concessionaire's sole cost and expense, make the Action Bay Improvements as described and depicted in Attachment 1 to the Amendment.

PREVIOUS ACTION:

STAFF RECOMMENDATION:

Approve the First Amendment to the License and Concession Agreement with Compass Training Center AZ.

FISCAL IMPACT?

N/A

ATTACHMENTS:

1.	AGR - First Amendment to Compass Training's Shooting Facility License and Concession Agreement(6361057.1)
2.	Attachment 1 - Action Bay Improvements

**FIRST AMENDMENT
TO
LICENSE AND CONCESSION AGREEMENT
FOR THE CHINO VALLEY SHOOTING FACILITY**

THIS FIRST AMENDMENT (this "Amendment") to the License and Concession Agreement for the Chino Valley Shooting Facility is entered as of _____, 2024, between the Town of Chino Valley, an Arizona municipal corporation (the "Town"), and Compass Training Center AZ, an Arizona nonprofit corporation (the "Concessionaire") (each individually a "Party" and collectively the "Parties").

RECITALS

A. On July 1, 2019, the Parties entered a License and Concession Agreement (the "Agreement") for the Concessionaire to operate the Chino Valley Shooting Range (the "Facility," as defined in the Agreement).

B. Under Section 1.4 of the Agreement, the Town may, in its sole discretion, allow the Concessionaire to alter or make improvements to the Facility.

C. The Concessionaire proposed improvements generally described as adding three action bays west of the existing bays and north of Shooting Range Road and more particularly described in Section 3 below (the "Action Bay Improvements").

D. The purpose of this Amendment is to extend the Initial Term of the Agreement and authorize the Concessionaire to make the Action Bay Improvements.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing introduction and recitals, which are incorporated herein by reference, the following mutual covenants and conditions, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Town and the Concessionaire hereby agree as follows:

1. Incorporation of Defined Terms. All capitalized terms not otherwise defined in this Amendment have the same meanings as contained in the Agreement.

2. Modifications to the Agreement. Section 1.2(A) of the Agreement is amended as follows (deletions; **additions**):

A. Initial Term. This Agreement shall be effective from the date first set forth above and shall remain in effect until ~~May 27, 2029~~, **June 30, 2034**, unless terminated or canceled earlier as set forth below (the "Initial Term").

3. Action Bay Improvements. In accordance with Section 1.4 of the Agreement, and subject to review and approval by the Town Engineer, the Town hereby authorizes the Concessionaire to, at the Concessionaire's sole cost and expense, make the Action Bay Improvements, as described and depicted in the materials attached hereto as Attachment 1 and incorporated herein by reference. The Concessionaire is solely responsible for the construction and installation of the Action Bay Improvements. The Concessionaire shall obtain all building permits necessary for the construction of the Action Bay Improvements and cause them to be constructed in a good and workmanlike manner and in compliance with all applicable federal, state, and local laws.

4. Effect of Amendment. The Agreement is affirmed and ratified and, except as expressly modified herein, all terms and conditions of the Agreement shall remain in full force and effect.

5. Non-Default. By executing this Amendment, the Concessionaire affirmatively asserts that (i) the Town is not currently in default, nor has been in default at any time prior to this Amendment, under any of the terms or conditions of the Agreement, and (ii) any and all claims, known and unknown, relating to the Agreement and existing on or before the date of this Amendment are forever waived.

6. Conflict of Interest. This Amendment and the Agreement, as amended, may be canceled by the Town pursuant to Ariz. Rev. Stat. § 38-511.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the Parties have executed this Amendment as of the date and year first set forth above.

"Town"

TOWN OF CHINO VALLEY,
an Arizona municipal corporation

Jack W. Miller, Mayor

ATTEST:

Erin N. Deskins, Town Clerk

APPROVED AS TO FORM:

Andrew J. McGuire, Town Attorney
Gust Rosenfeld, PLC

"Consultant"

COMPASS TRAINING CENTER AZ,
an Arizona nonprofit corporation

Signature

Name

Title

**ATTACHMENT 1
TO
FIRST AMENDMENT
TO
LICENSE AND CONCESSION AGREEMENT
FOR THE CHINO VALLEY SHOOTING FACILITY**

[Action Bay Improvements]

See the following pages.



History: Granite Mountain Outlaws (GMO) is a Cowboy Action Shooting Club, established as a 501(c)(3) (See Attachment "A") in 2021. Cowboy Action Shooting is a multi-faceted shooting sport in which contestants compete with firearms typical of those used in the taming of the Old West: *single action revolvers, pistol caliber lever action rifles, and old-time shotguns*. The shooting competition is staged in a unique, characterized, "Old West" style. It is a timed sport in which shooters compete for prestige on a course of different shooting stages.

The Single Action Shooting Society is an international organization created to preserve and promote the sport of Cowboy Action Shooting. SASS members share a common interest in preserving the history of the Old West and competitive shooting. Each participant is required to adopt a shooting alias appropriate to a character or profession of the late 19th century, a Hollywood western star, or an appropriate character from fiction. Their costume is then developed accordingly. Many event participants gain more enjoyment from the costuming aspect of our sport than from the shooting competition, itself. Regardless of a SASS member's individual area of interest, SASS events provide regular opportunities for fellowship and fun with like-minded folks and families.

SASS matches are held worldwide, in addition to all 50 states. Presently there are 15 clubs in Arizona, with 2 in Yavapai County. *The Whiskey Row Gunslingers and, as the newest club, the Granite Mountain Outlaws.*

GMO averages 18 – 25 participants each month. Currently we are using 2 bays (the 200-yard, bay #3 and the Training, Bay #4) at Compass Training Center (CTC) in Chino Valley. Range instructors and the public are denied the use of the bays when we are holding our events.

Authorization: In as much as Compass Training Center is the Lessee of Parcel 306-01-019A and responsible for maintaining and improving property, an agreement was made between Compass Training Center and Granite Mountain Outlaws on June 23, 2023 to authorize Granite Mountain Outlaws to act as an Authorized Agent of Compass Training Center for the sole purpose of negotiating construction of the Action Bays Project. (See attachment "A")

Proposal: We would like to see the construction of 3 Action Bays at CTC to be used primarily for Cowboy Action Shooting. This would allow us to have a designated area, separate from the Pistol and Rifle (Public Shooting) bays, for our regular monthly events. This should increase our number of monthly participants to an average of 25 – 35 (with a maximum capacity of 50). In addition, when not used for Cowboy Action, they would be available for use by CTC instructors for training classes.

To accomplish this, we will need to excavate an area West of the current pistol range and North of Shooting Range Road. The land used by the CTC is leased (See Attachment "B") from the City of Chino Valley and Council approval will be required. The initial dig will be approximately 350 feet wide and 240 feet deep, requiring the removal of approx. 6,000 cubic yards of material. Once the dirt has been cleared, HESCO barriers (<https://www.hesco.com/solutions/training-ranges>) will be used to define the separate bays. A 3-foot HESCO will be placed on top of a 7-foot HESCO for a total of 10-foot barrier between bays. HESCO barriers come in 100-foot lengths.

Parking for 20 – 25 vehicles (subject to regulations) will be available on the South side close to Shooting Range Road. Entrance to the bays will be from the West in a one-way direction, exiting at the Southeast corner where participants can either leave the range or continue to CTC.

Prior to construction, we will be required to have an onsite water flow/drainage report. Areas of concern will be the downrange area at the foot of the berms and the existing covert closest to the pistol berm. Increased drainage should be minimal as the rear berms will be constructed at the apex of the hill.

The bays are expected to have no more than a 2-degree slope to the southeast. Drainpipes will be used to connect the flow of runoff at the base of the berms to the existing primary covert on the west side of the pistol berm.

Dirt removed from the bays will be used to increase the height of the action bay berm as well as other areas throughout CTC. When not in use, the entrance to the action bays will be closed.

In as much as the GMO is a non-profit organization, we are looking for conditional approval and guidance from the City of Chino Valley before we gather bids for pricing and solicit funds for construction.

Thank you,



George Lusk, Director

AKA: Tramp #8586

Granite Mountain Outlaws, TIN # 87-2502842

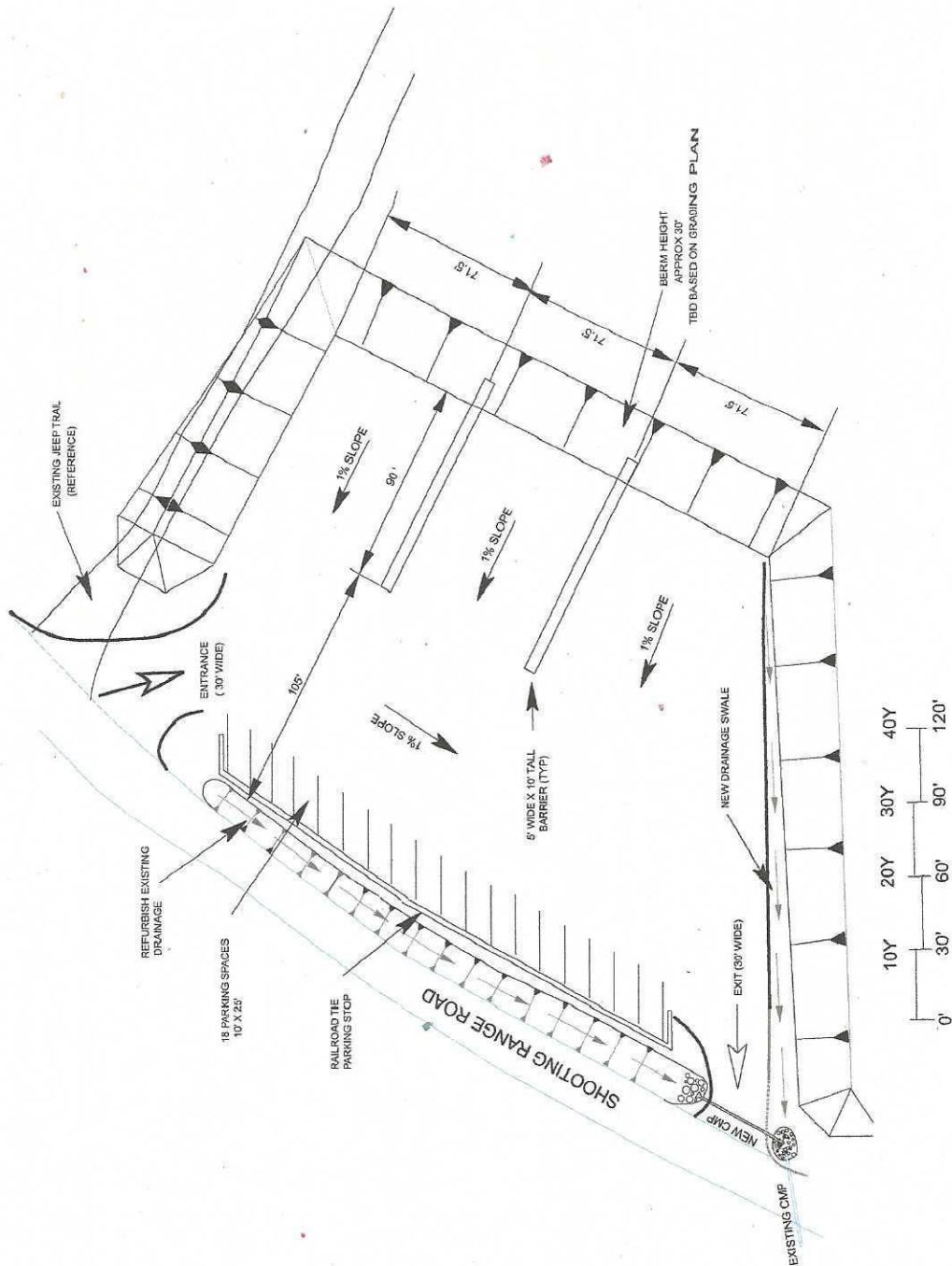
928-963-6515

Tramp@granitemountainoutlaws.org

www.granitemountainoutlaws.org

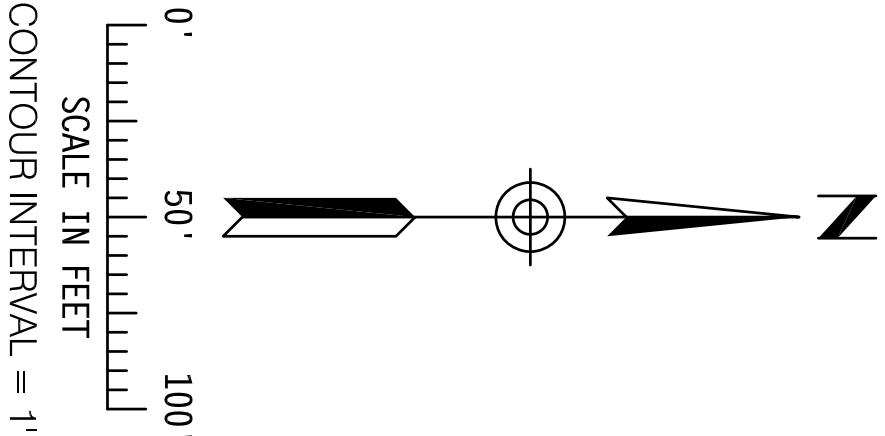
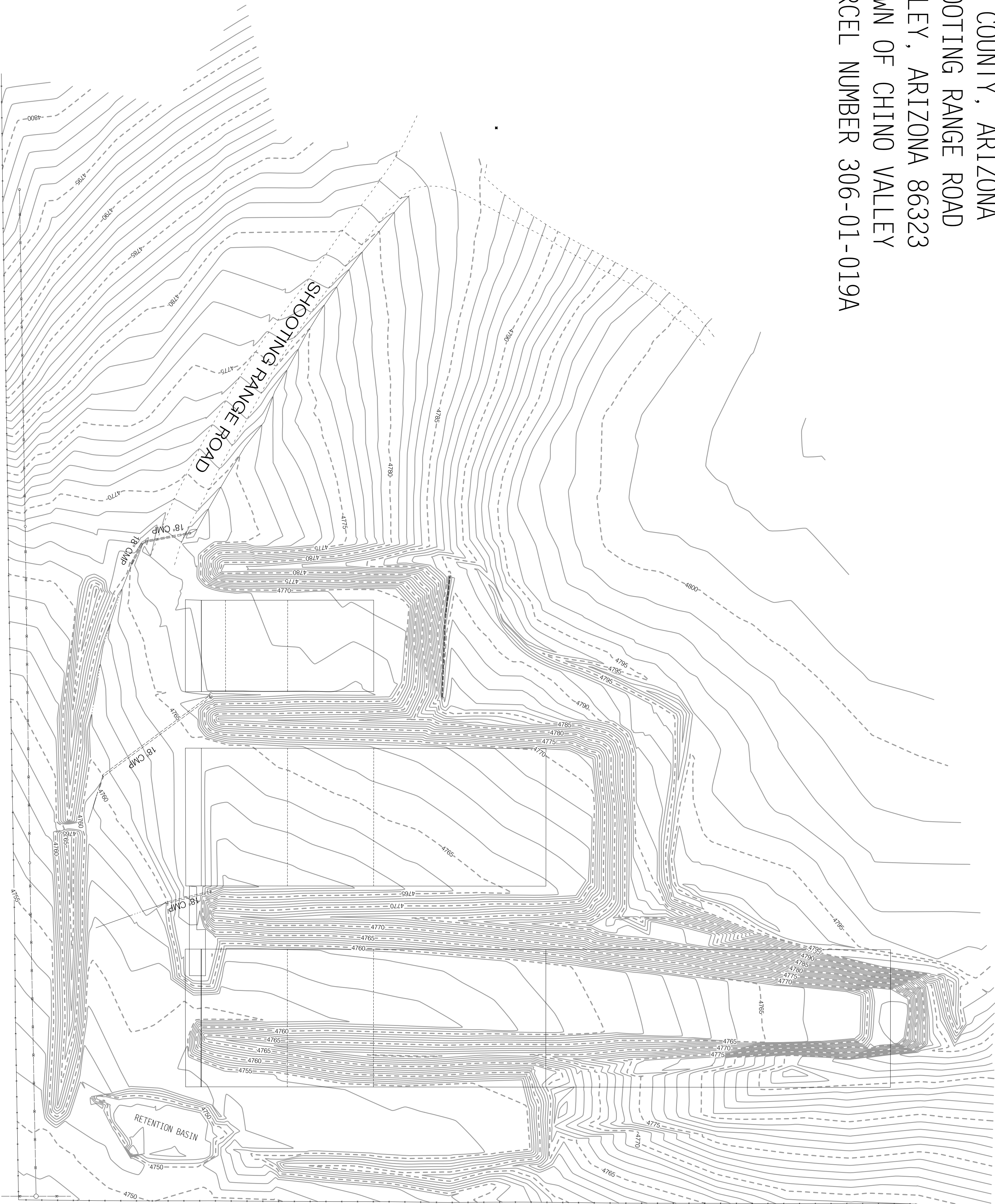
Beaver's look
George H. Smith 4/23/23

JOHN STANKiewicz
22 m 1
6-23



COMPASS TRAINING CENTER
SECTION 7, TOWNSHIP 16 NORTH, RANGE 1 WEST
OF THE GILA AND SALT RIVER MERIDIAN
YAVAPAI COUNTY, ARIZONA
3926 SHOOTING RANGE ROAD
CHINO VALLEY, ARIZONA 86323
OWNER: TOWN OF CHINO VALLEY
ASSESSOR'S PARCEL NUMBER 306-01-019A

EXITING TOPOGRAPHY



I, THOMAS G. CALLAHAN CERTIFY THAT I AM
A REGISTERED LAND SURVEYOR IN THE
STATE OF ARIZONA AND THAT THIS MAP WAS
PREPARED UNDER MY DIRECTION FROM
FIELD SURVEYS PERFORMED MARCH 1, 2022.



Expires 06/30/2026

DAVA

PLANNING & ASSOCIATES, INC.

310 East Union Street
Prescott, AZ 86303
(928) 776-5971
www.davainc.com

CLIENT: COMPASS TRAINING CENTER

DATE: MARCH 29, 2024

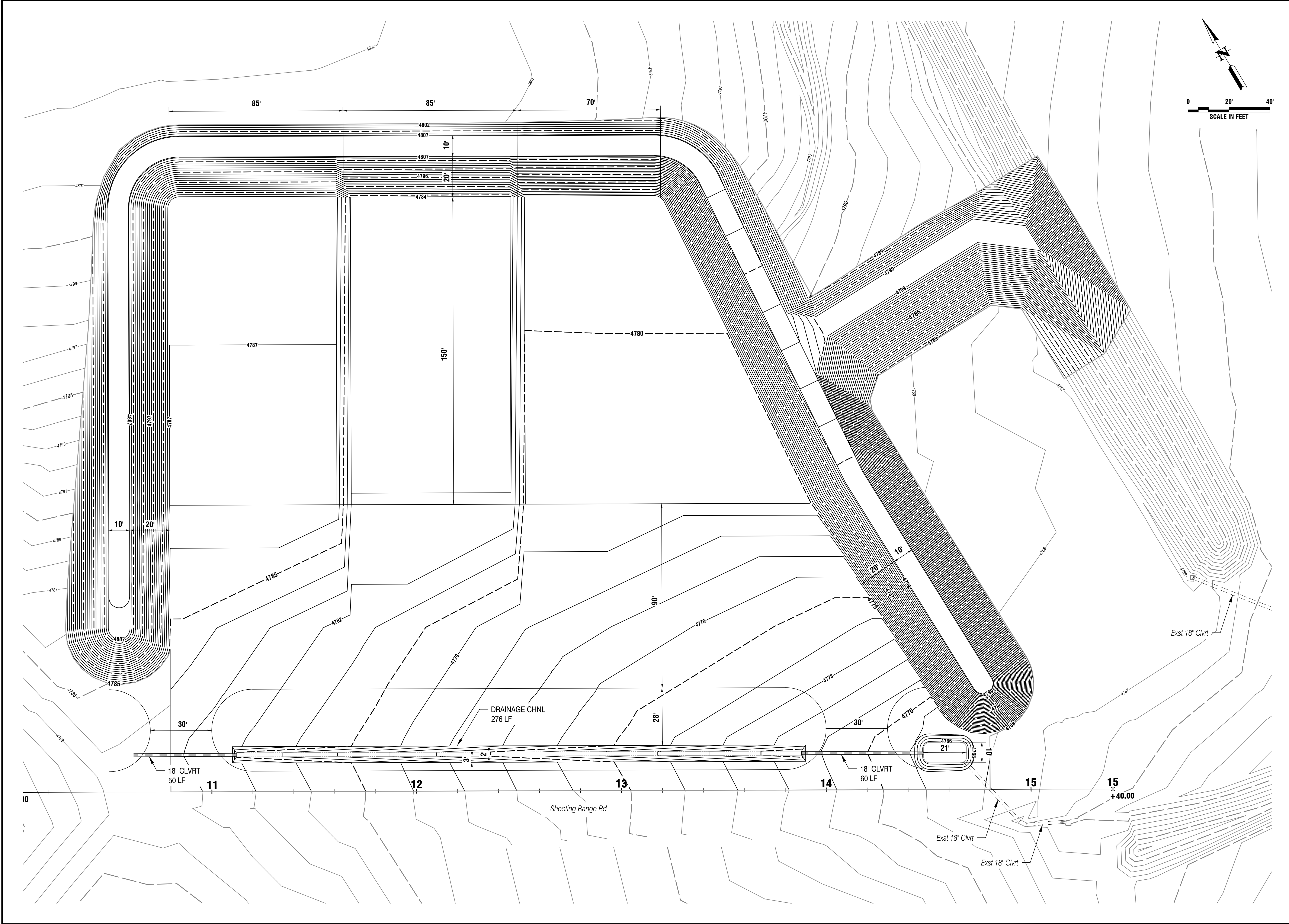
JOB: 899CTC

DRAWN BY: TGC

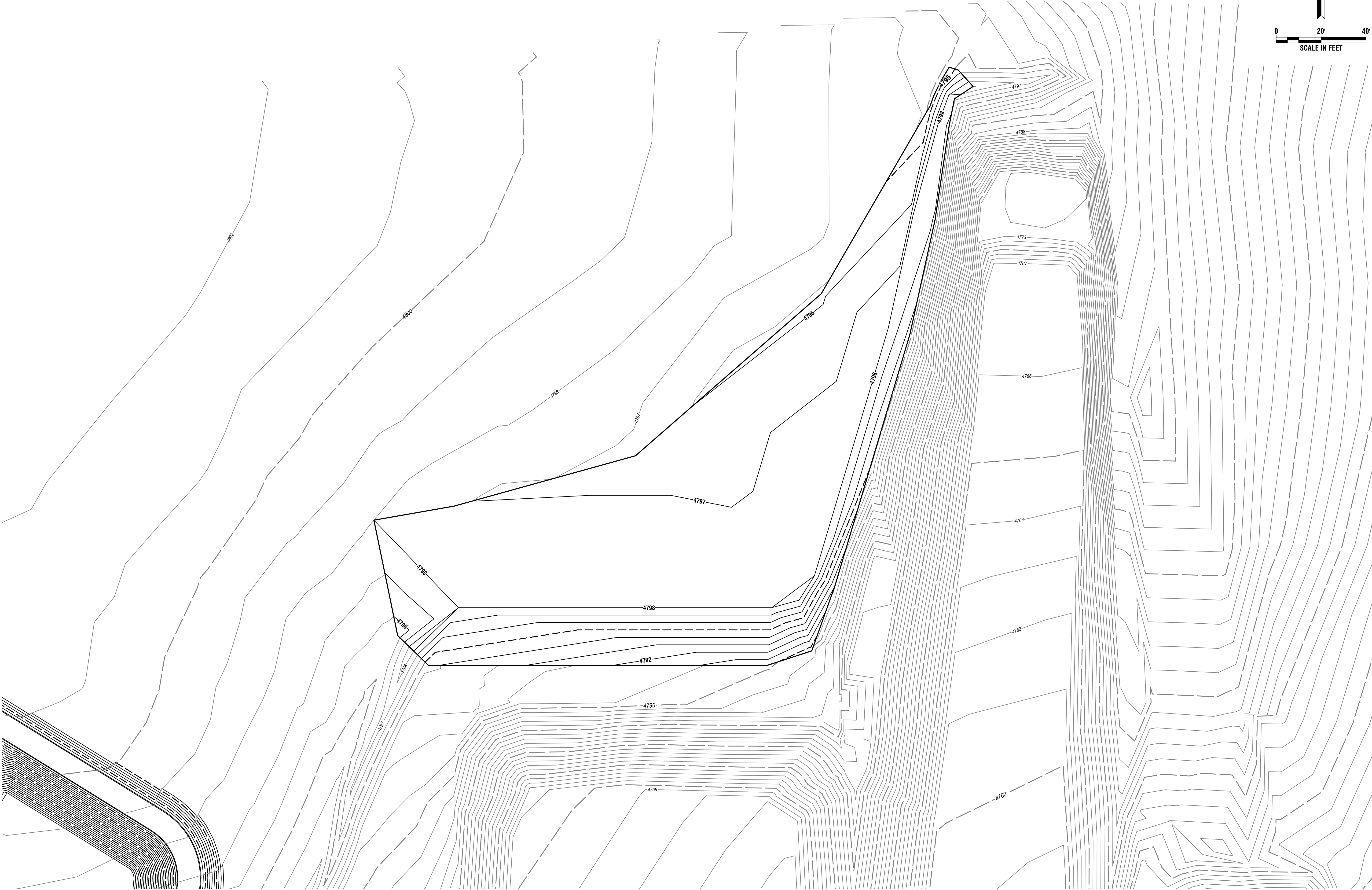
SHEET 1 OF 1

Page 18 of 65

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DAYA & ASSOCIATES, INC. PLANNING ENGINEERING SURVEYING 310 East Union Street Prescott, AZ 86303 (928) 793-1237 www.dayacivil.com Email: mail@dayacivil.com	
CHECKED BY: gmb	DRAWN BY: sdt
COMPASS TRAINING CENTER Shooting Range Grading Plan	
Finish Grade	
FOR REVIEW NOT FOR CONSTRUCTION	
DATE: March 2024	
PROJECT NO.: 899ctc	
SHEET NUMBER	
1	OF 2



COMPASS TRAINING CENTER

Shooting Range Grading Plan

FOR REVIEW

NOT FOR CONSTRUCTION

DATE

March 2024

PROJECT NO.

899ctc

SHEET NUMBER

2 OF 2

DAYA & ASSOCIATES, INC.

PLANNING

ENGINEERING

SURVEYING

310 East Union Street
Prescott, AZ 86303
(928) 799-1234
www.dayaaz.com
Email: mail@dayaaz.com

CHECKED BY: gmb

APPRV

REVISIONS

NO. DATE

APPROV

DRAWN BY: sdt

Volume Report

Project: K:\899\899CTC\c3d\Xref\X-fg-899ctc.dwg

Alignment: Range-CL

Sample Line Group: SLG-2

Start Sta: 10+31.091

End Sta: 15+40.000

Station	Cut Area (Sq.ft.)	Cut Volume (Cu.yd.)	Reusable Volume (Cu.yd.)	Fill Area (Sq.ft.)	Fill Volume (Cu.yd.)	Cum. Cut Vol. (Cu.yd.)	Cum. Reusable Vol. (Cu.yd.)	Cum. Fill Vol. (Cu.yd.)	Cum. Net Vol. (Cu.yd.)
10+31.091	0.00	0.00	0.00	33.22	0.00	0.00	0.00	0.00	0.00
10+50.000	0.00	0.00	0.00	2918.20	1033.48	0.00	0.00	1033.48	-1033.48
10+75.000	607.27	281.14	281.14	364.16	1519.61	281.14	281.14	2553.09	-2271.94
11+00.000	1525.71	987.49	987.49	98.28	214.09	1268.63	1268.63	2767.18	-1498.54
11+25.000	1553.37	1425.50	1425.50	97.68	90.72	2694.13	2694.13	2857.90	-163.76
11+50.000	1497.99	1412.67	1412.67	99.52	91.29	4106.80	4106.80	2949.19	1157.61
11+75.000	2216.32	1719.58	1719.58	100.55	92.63	5826.39	5826.39	3041.82	2784.57
12+00.000	2100.02	1998.30	1998.30	114.93	99.76	7824.69	7824.69	3141.58	4683.11
12+25.000	1952.06	1875.96	1875.96	119.69	108.62	9700.65	9700.65	3250.19	6450.46
12+50.000	2118.84	1884.68	1884.68	123.15	112.42	11585.33	11585.33	3362.62	8222.71
12+75.000	2324.88	2057.28	2057.28	134.81	119.43	13642.61	13642.61	3482.04	10160.56
13+00.000	2074.50	2036.75	2036.75	163.38	138.05	15679.36	15679.36	3620.09	12059.26
13+25.000	1689.39	1742.54	1742.54	224.28	179.47	17421.90	17421.90	3799.56	13622.34
13+50.000	574.56	1048.12	1048.12	632.66	396.73	18470.02	18470.02	4196.29	14273.73
13+75.000	26.06	278.06	278.06	999.00	755.40	18748.08	18748.08	4951.69	13796.39
14+00.000	0.15	12.13	12.13	1852.84	1320.29	18760.22	18760.22	6271.99	12488.23
14+25.000	0.00	0.07	0.07	1785.40	1684.37	18760.28	18760.28	7956.36	10803.93
14+50.000	31.45	14.56	14.56	1692.05	1609.93	18774.85	18774.85	9566.29	9208.56
14+75.000	5.11	16.93	16.93	1411.23	1436.70	18791.78	18791.78	11002.99	7788.79
14+97.971	0.00	2.17	2.17	850.01	961.92	18793.95	18793.95	11964.90	6829.05
15+20.000	0.01	0.00	0.00	457.80	533.51	18793.95	18793.95	12498.41	6295.54
15+40.000	0.00	0.00	0.00	66.97	194.36	18793.96	18793.96	12692.77	6101.61

Volume Report

Project: K:\899\899CTC\c3d\Xref\X-fg-899ctc.dwg

Alignment: Embankment Earthwork Calc Alignment

Sample Line Group: SLG-Embankment

Start Sta: 20+72.952

End Sta: 24+00.000

Station	Cut Area (Sq.ft.)	Cut Volume (Cu.yd.)	Reusable Volume (Cu.yd.)	Fill Area (Sq.ft.)	Fill Volume (Cu.yd.)	Cum. Cut Vol. (Cu.yd.)	Cum. Reusable Vol. (Cu.yd.)	Cum. Fill Vol. (Cu.yd.)	Cum. Net Vol. (Cu.yd.)
20+72.952	8.79	0.00	0.00	20.99	0.00	0.00	0.00	0.00	0.00
21+00.000	1.50	5.15	5.15	86.42	53.80	5.15	5.15	53.80	-48.64
21+20.000	1.77	1.21	1.21	116.12	75.02	6.36	6.36	128.81	-122.45
21+40.000	2.22	1.48	1.48	117.93	86.69	7.84	7.84	215.50	-207.66
21+60.000	13.67	5.89	5.89	119.08	87.78	13.73	13.73	303.28	-289.55
21+80.000	23.35	13.71	13.71	155.35	101.64	27.44	27.44	404.92	-377.48
22+00.000	18.87	15.64	15.64	206.27	133.93	43.08	43.08	538.85	-495.77
22+20.000	23.70	15.77	15.77	259.50	172.51	58.85	58.85	711.36	-652.51
22+40.000	0.59	8.99	8.99	268.55	195.57	67.84	67.84	906.93	-839.09
22+60.000	0.00	0.22	0.22	246.76	190.85	68.06	68.06	1097.79	-1029.73
22+80.000	0.00	0.00	0.00	199.64	165.33	68.06	68.06	1263.12	-1195.06
23+00.000	0.00	0.00	0.00	154.19	131.05	68.06	68.06	1394.17	-1326.11
23+20.000	2.35	0.87	0.87	99.23	93.86	68.93	68.93	1488.03	-1419.09
23+40.000	6.12	3.14	3.14	45.83	53.72	72.07	72.07	1541.75	-1469.68
23+60.000	8.15	5.28	5.28	28.84	27.66	77.35	77.35	1569.41	-1492.06
23+80.000	0.98	3.38	3.38	15.56	16.44	80.73	80.73	1585.85	-1505.12
24+00.000	0.32	0.48	0.48	4.57	7.46	81.21	81.21	1593.21	-1506.59



TOWN COUNCIL AGENDA ITEM STAFF REPORT

AGENDA ITEM # 6b
MEETING DATE: 11/12/2024
CONTACT PERSON: Frank Marbury, Public Works Director/Town Engineer, Terri Denemy, Acting Town Manager
ITEM TYPE: Consent Item

AGENDA ITEM TITLE:

Consideration and possible action to approve a Professional Services Agreement with Montgomery & Associates for a wellhead capture and protection study for an amount not to exceed \$25,000.

SUMMARY:

Montgomery & Associates (M&A) is currently working on the Town's underground storage facility (USF) and recharge permit renewal with the development of the Prescott AMA groundwater flow model. While Montgomery & Associates is mobilized for the USF permit and have completed and calibrated the groundwater flow model it may be used for this wellhead capture and protection plan with a significantly reduced cost. The scope of work and estimated cost for groundwater modeling in support of a wellhead capture and protection study for water supply wells owned by the Town of Chino Valley.

Once completed the wellhead capture and protection plan will be delivered to the Development Services and Public Works Departments identifying land areas that are very sensitive to potential contamination and possible impacts to the Town's existing groundwater wells based on certain land uses. This report may be referenced for the Town's future revised Unified Development Ordinance and water and sewer ordinances.

PREVIOUS ACTION:

On February 27, 2024 Council approved the Professional Services Agreement with Montgomery & Associates, in the amount of \$80,000, for the Renewal of the Underground Storage Facility Permit for the Old Home Manor Recharge Project.

STAFF RECOMMENDATION:

Approve the Professional Services Agreement with Montgomery & Associates for a wellhead capture and protection study for an amount not to exceed \$25,000.

FISCAL IMPACT?

This was not a budgeted item. There is, however, available budget capacity in the General Capital Improvement Fund under the Water System Development line item. It is expected that the remaining budget in this line item will be sufficient should additional opportunities for water rights purchases come up during the year.

Available budget: General Capital Improvement Fund - Water System Development \$487,360

Less this approval item: Montgomery & Associates - wellhead capture and protection study -\$25,000

Remaining budget: General Capital Improvement Fund - Water System Development \$462,360

ATTACHMENTS:

1.	PSA - Montgomery & Associates - Capture Zone Analyses re Wellhead Protection Study (001)(6362806.1)
2.	Exhibit A - M&A Proposal - Chino Valley Wellhead Protection

**PROFESSIONAL SERVICES AGREEMENT
BETWEEN
THE TOWN OF CHINO VALLEY
AND
MONTGOMERY & ASSOCIATES, INC.**

THIS PROFESSIONAL SERVICES AGREEMENT (this "Agreement") is entered into as of November 12, 2024, between the Town of Chino Valley, an Arizona municipal corporation (the "Town"), and Errol L. Montgomery & Associates, Inc., an Arizona corporation d/b/a Montgomery & Associates (the "Consultant"). The Town and the Consultant are each a "Party" to this Agreement and are the "Parties."

RECITALS

- A. The Town requires professional water resource consulting services to perform groundwater modeling for a wellhead protection study (the "Services").
- B. The Consultant possesses the skill and experience required to provide the Services.
- C. It is in the Town's best interest to enter into this Agreement with the Consultant to provide the Services outlined in Section 2 below (the "Scope of Work").

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing introduction and recitals, which are incorporated herein by reference, the following mutual covenants and conditions, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. Term of Agreement. This Agreement shall be effective as of the date first set forth above and shall remain in full force and effect until November 11, 2025, unless terminated as otherwise provided in this Agreement.

2. Scope of Work. The Consultant shall provide the Services outlined in the Scope of Work attached hereto as Exhibit A and incorporated herein by reference. The Consultant shall (A) provide the Services required by this Agreement, (B) be responsible for all means, methods, techniques, sequences, and proceedings associated with the Services, and (C) be responsible for the acts and omissions of its employees, agents, and other persons performing any of the Services under a contract with the Consultant. Prior to commencing the Services, the Consultant shall tour relevant sites, become familiar with existing conditions, including utilities, and notify the Town of any constraints associated with the sites.

3. Compensation. The Town shall pay the Consultant an amount not to exceed \$25,000 for the Services at the rates outlined in the Fee Schedule attached hereto as a part of Exhibit A.

4. Payments. The Town shall pay the Consultant monthly, based on work performed and completed to date, and upon submission and approval of invoices. All invoices shall document and itemize all work completed to date. Each invoice statement shall include a record of time expended and work performed in sufficient detail to justify payment.

5. Safety Plan. The Consultant shall provide the Services in accordance with a safety plan that is compliant with the standards of the Occupational Safety and Health Administration ("OSHA"), American National Standards Institute, and National Institute for Occupational Safety and Health. If, in the Consultant's sole determination, the Services to be provided do not require a safety plan, the Consultant shall notify the Town, in writing, describing the reasons a safety plan is unnecessary. The Town reserves the right to request a safety plan following such notification.

6. Documents. All documents, including any intellectual property rights thereto, prepared and submitted to the Town pursuant to this Agreement shall be the property of the Town. The Town may use such documents for other purposes without further compensation to the Consultant; however, any reuse without written verification or adaptation by the Consultant for the specific purpose intended will be at the Town's sole risk and without liability or legal exposure to the Consultant.

7. Consultant Personnel. The Consultant shall provide experienced personnel, capable of and devoted to the successful performance of the Services under this Agreement. The Consultant agrees to assign specific individuals to key positions. If deemed qualified, the Consultant is encouraged to hire Town residents to fill vacant positions at all levels. The Consultant agrees that, upon commencement of the Services to be performed under this Agreement, key personnel will not be removed or replaced without prior written notice to the Town. If key personnel are not available to perform the Services for a continuous period exceeding 30 calendar days, or are expected to devote substantially less effort to the Services than initially anticipated, the Consultant shall immediately notify the Town of same and shall, subject to the concurrence of the Town, replace such personnel with personnel possessing substantially equal ability and qualifications.

8. Inspection; Acceptance. All work shall be subject to inspection and acceptance by the Town at reasonable times during the Consultant's performance. The Consultant shall provide and maintain a self-inspection system that is acceptable to the Town.

9. Licenses. The Consultant shall maintain in current status all federal, state, and local licenses and permits required for the operation of the business conducted by the

Consultant. The Town has no obligation to provide the Consultant, its employees, or subcontractors any business registrations or licenses required to perform the specific services set forth in this Agreement.

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

11. Performance Warranty. In addition to any specific obligations set forth in Exhibit A, the Consultant warrants that the Services rendered will conform to the requirements of this Agreement and shall be carried out with the care and skill ordinarily used by members of the same profession practicing under similar circumstances at the same time and in the same locality.

12. Indemnification. To the fullest extent permitted by law, the Consultant shall indemnify and hold harmless the Town and each council member, officer, employee, or agent thereof (the Town and any such person being herein called an "Indemnified Party"), for, from, and against any and all losses, claims, damages, liabilities, costs, and expenses (including, but not limited to, reasonable attorneys' fees, court costs, and the costs of appellate proceedings) to which any such Indemnified Party may become subject, under any theory of liability whatsoever ("Claims") to the extent that such Claims (or actions in respect thereof) are caused by the negligent acts, recklessness, or intentional misconduct of the Consultant, its officers, employees, agents, or any tier of subcontractor in connection with the Consultant's work or services in the performance of this Agreement. The amount and type of insurance coverage requirements set forth below will in no way be construed as limiting the scope of the indemnity in this Section.

13. Insurance.

13.1 General.

A. Insurer Qualifications. Without limiting any obligations or liabilities of the Consultant, the Consultant shall purchase and maintain, at its own expense, hereinafter stipulated minimum insurance with insurance companies authorized to do business in the State of Arizona pursuant to ARIZ. REV. STAT. § 20-206, as amended, with an AM Best, Inc. rating of A- or above with policies and forms satisfactory to the Town. Failure to maintain insurance as specified herein may result in termination of this Agreement at the Town's option.

B. No Representation of Coverage Adequacy. By requiring insurance herein, or by approving or expressing satisfaction with insurance policies and forms pursuant to the provisions of this Agreement, the Town does not represent

that coverage and limits will be adequate to protect the Consultant. The Town reserves the right to review any and all of the insurance policies and/or endorsements cited in this Agreement, but has no obligation to do so. Failure to demand such evidence of full compliance with the insurance requirements set forth in this Agreement or failure to identify any insurance deficiency shall not relieve the Consultant from, nor be construed or deemed a waiver of, its obligation to maintain the required insurance at all times during the performance of this Agreement.

C. Additional Insured. All insurance coverage, except Workers' Compensation insurance and Professional Liability insurance, if applicable, shall name, to the fullest extent permitted by law for claims arising out of the performance of this Agreement, the Town, its agents, representatives, officers, directors, officials, and employees as Additional Named Insured as specified under the respective coverage sections of this Agreement.

D. Coverage Term. All insurance required herein shall be maintained in full force and effect until all work or services required to be performed under the terms of this Agreement are satisfactorily performed, completed, and formally accepted by the Town unless specified otherwise in this Agreement.

E. Primary Insurance. The Consultant's insurance shall be primary and non-contributory insurance with respect to performance of this Agreement and in the protection of the Town as an Additional Insured.

F. Claims Made. If any insurance policies required by this Agreement are written on a "claims made" basis, coverage shall extend, either by keeping coverage in force or purchasing an extended reporting option, for three years past completion and acceptance of the Services. Such continuing coverage shall be evidenced by submission of annual Certificates of Insurance and necessary endorsements citing applicable coverage is in force and contains the provisions as required herein for the three-year period.

G. Waiver. All policies, except for Professional Liability, including Workers' Compensation insurance, shall contain a waiver of rights of recovery (subrogation) against the Town, its agents, representatives, officials, officers, and employees for any claims arising out of the work or services of the Consultant. The Consultant shall arrange to have such subrogation waivers incorporated into each policy via formal written endorsement thereto.

H. Policy Deductibles and/or Self-Insured Retentions. The policies set forth in these requirements may provide coverage that contains deductibles or self-insured retention amounts. Such deductibles or self-insured retention shall not

be applicable with respect to the policy limits provided to the Town. The Consultant shall be solely responsible for any such deductible or self-insured retention amount.

I. Use of Subcontractors. If any work under this Agreement is subcontracted in any way, the Consultant shall execute written agreements with its subcontractors containing the indemnification provisions set forth in this Section and insurance requirements set forth herein protecting the Parties. The Consultant shall be responsible for executing any agreements with its subcontractors and obtaining certificates of insurance verifying the insurance requirements.

J. Evidence of Insurance. Prior to commencing any work or services under this Agreement, the Consultant will provide the Town with suitable evidence of insurance in the form of certificates of insurance and a copy of the declaration page(s) of the insurance policies as required by this Agreement, issued by the Consultant's insurer(s) as evidence that policies are placed with acceptable insurers as specified herein and provide the required coverages, conditions and limits of coverage specified in this Agreement and that such coverage and provisions are in full force and effect. Confidential information such as the policy premium may be redacted from the declaration page(s) of each insurance policy, provided that such redactions do not alter any of the information required by this Agreement. The Town shall reasonably rely upon the certificates of insurance and declaration page(s) of the insurance policies as evidence of coverage. Still, such acceptance and reliance shall not waive or alter in any way the insurance requirements or obligations of this Agreement. If any of the policies required by this Agreement expire during the life of this Agreement, it shall be the Consultant's responsibility to forward renewal certificates and declaration page(s) to the Town 30 days prior to the expiration date. All certificates of insurance and declarations required by this Agreement shall be identified by referencing this Agreement. A \$25.00 administrative fee shall be assessed for all certificates or declarations received without the appropriate reference to this Agreement. Additionally, certificates of insurance and declaration page(s) of the insurance policies submitted without referencing this Agreement will be subject to rejection and may be returned or discarded. Certificates of insurance and declaration page(s) shall specifically include the following provisions:

(1) The Town, its agents, representatives, officers, directors, officials, and employees are Additional Insureds as follows:

(a) Commercial General Liability – Under Insurance Services Office, Inc., ("ISO") Form CG 20 10 04 13 or equivalent.

(b) Auto Liability – Under ISO Form CA 20 48 or equivalent.

(c) Excess Liability – Follow Form to underlying insurance.

(2) The Consultant's insurance shall be primary insurance with respect to performance of this Agreement.

(3) All policies, except for Professional Liability, including Workers' Compensation, waive rights of recovery (subrogation) against the Town, its agents, representatives, officers, officials, and employees for any claims arising out of work or services performed by the Consultant under this Agreement.

ACORD certificate of insurance form 25 (2014/01) is preferred. If ACORD certificate of insurance form 25 (2001/08) is used, the phrases in the cancellation provision "endeavor to" and "but failure to mail such notice shall impose no obligation or liability of any kind upon the company, its agents or representatives" shall be deleted. Certificate forms other than ACORD form shall have similar restrictive language deleted.

K. Endorsements. The Consultant shall provide the Town with the necessary endorsements to ensure the Town is provided the insurance coverage set forth in this Section 13.

13.2 Required Insurance Coverage.

A. Commercial General Liability. The Consultant shall maintain "occurrence" form Commercial General Liability insurance with an unimpaired limit of not less than \$1,000,000 for each occurrence, \$2,000,000 Products and Completed Operations Annual Aggregate, and a \$2,000,000 General Aggregate Limit. The policy shall cover liability arising from premises, operations, independent contractors, products-completed operations, personal injury, and advertising injury. Coverage under the policy will be at least as broad as ISO policy form CG 00 010 93 or equivalent thereof, including but not limited to, separation of insured's clause. To the fullest extent allowed by law, for claims arising out of the performance of this Agreement, the Town, its agents, representatives, officers, officials, and employees shall be named as an Additional Insured. If any Excess insurance is utilized to fulfill the requirements of this subsection, such Excess insurance shall be "follow form" equal or broader in coverage scope than underlying insurance.

B. Vehicle Liability. The Consultant shall maintain Business Automobile Liability insurance with a limit of \$1,000,000 each occurrence on the Consultant's owned, hired, and non-owned vehicles assigned to or used in the performance of the Consultant's work or services under this Agreement. Coverage

will be at least as broad as ISO coverage code "1" "any auto" policy form CA 00 01 12 93 or equivalent thereof. To the fullest extent allowed by law, for claims arising out of the performance of this Agreement, the Town, its agents, representatives, officers, directors, officials, and employees shall be cited as an Additional Insured under ISO Business Auto policy Designated Insured Endorsement form CA 20 48 or equivalent. If any Excess insurance is utilized to fulfill the requirements of this subsection, such Excess insurance shall be "follow form" equal or broader in coverage scope than underlying insurance.

C. Professional Liability. If this Agreement is the subject of any professional services or work, or if the Consultant engages in any professional services or work in any way related to performing the work under this Agreement, the Consultant shall maintain Professional Liability insurance covering negligent errors and omissions arising out of the Services performed by the Consultant, or anyone employed by the Consultant, or anyone for whose negligent acts, mistakes, errors, and omissions the Consultant is legally liable, with an unimpaired liability insurance limit of \$2,000,000 each claim and \$2,000,000 annual aggregate.

D. Workers' Compensation Insurance. If the Consultant employs anyone who is required by law to be covered by workers' compensation insurance, the Consultant shall maintain Workers' Compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction over the Consultant's employees engaged in the performance of work or services under this Agreement and shall also maintain Employers Liability Insurance of not less than \$500,000 for each accident, \$500,000 disease for each employee and \$1,000,000 disease policy limit.

13.3 Cancellation and Expiration Notice. The Consultant shall provide at least 30 days prior written notice to the Town before insurance required herein expires, is canceled, or is materially changed.

14. Termination; Cancellation. The Town may, by written notice to the Consultant as set forth in this Section, terminate this Agreement in whole or in part.

14.1 For Town's Convenience. This Agreement is for the convenience of the Town and, as such, may be terminated without cause after receipt by the Consultant of written notice by the Town. Upon termination for convenience, the Consultant shall be paid for all undisputed Services performed to the termination date.

14.2 For Cause. If either Party fails to perform any obligation pursuant to this Agreement and such Party fails to cure its nonperformance within 30 days after notice of nonperformance is given by the non-defaulting Party, such Party will be in default. In the event of such default, the non-defaulting Party may terminate this Agreement immediately

for cause and will have all remedies available to it at law or in equity, including, without limitation, the remedy of specific performance. If the nature of the defaulting Party's nonperformance is such that it cannot reasonably be cured within 30 days, then the defaulting Party will have such additional periods of time as may be reasonably necessary under the circumstances, provided the defaulting Party immediately (A) provides written notice to the non-defaulting Party and (B) commences to cure its nonperformance and thereafter diligently continues to completion the cure of its nonperformance. In no event shall any such cure period exceed 90 days. In the event of such termination for cause, the Town shall make payment to the Consultant for the undisputed portion of its fee due as of the termination date.

14.3 Due to Work Stoppage. The Town may terminate this Agreement upon 30 days' written notice to the Consultant in the event that the Services are permanently abandoned. If the Consultant abandons the Services without the consent of the Town, the Consultant shall be liable for all actual, incidental, and consequential damages arising from or related to said abandonment, including, but not limited to (A) the difference between the cost of a replacement consultant to complete the Services and the contract price for the Consultant under this Agreement; and (B) any additional charges, costs, fees or expenses for labor, materials or professional services incurred by the Town as a result of delays caused by abandonment of the Services by the Consultant. The Town shall use its best efforts to replace the Consultant within a reasonable time.

14.4 Conflict of Interest. This Agreement is subject to the provisions of ARIZ. REV. STAT. § 38-511. The Town may cancel this Agreement without penalty or further obligations by the Town or any of its departments or agencies if any person significantly involved in initiating, negotiating, securing, drafting, or creating this Agreement on behalf of the Town or any of its departments or agencies is, at any time while this Agreement or any extension of this Agreement is in effect, an employee of any other Party to this Agreement in any capacity or a consultant to any other Party of this Agreement with respect to the subject matter of this Agreement.

14.5 Gratuities. The Town may, by written notice to the Consultant, cancel this Agreement if it is found by the Town that gratuities, in the form of economic opportunity, future employment, entertainment, gifts, or otherwise, were offered or given by the Consultant or any agent or representative of the Consultant to any officer, agent or employee of the Town for the purpose of securing this Agreement. In the event this Agreement is canceled by the Town pursuant to this provision, the Town shall be entitled, in addition to any other rights and remedies, to recover and withhold from the Consultant an amount equal to 150% of the gratuity.

14.6 Agreement Subject to Appropriation. The Town is obligated only to pay its obligations set forth in this Agreement as may lawfully be made from funds appropriated and budgeted for that purpose during the Town's then-current fiscal year. The Town's

obligations under this Agreement are current expenses subject to the “budget law” and the unfettered legislative discretion of the Town concerning budgeted purposes and appropriation of funds. Should the Town elect not to appropriate and budget funds to pay its Agreement obligations, this Agreement shall be deemed terminated at the end of the then-current fiscal year term for which such funds were appropriated and budgeted for such purpose, and the Town shall be relieved of any subsequent obligation under this Agreement. The Parties agree that the Town has no obligation or duty of good faith to budget or appropriate the payment of the Town’s obligations set forth in this Agreement in any budget in any fiscal year other than the fiscal year in which this Agreement is executed and delivered. The Town shall be the sole judge and authority in determining the availability of funds for its obligations under this Agreement. The Town shall keep the Consultant informed as to the availability of funds for this Agreement. The obligation of the Town to make any payment pursuant to this Agreement is not a general obligation or indebtedness of the Town. The Consultant hereby waives any and all rights to bring any claim against the Town from or relating in any way to the Town’s termination of this Agreement pursuant to this Section.

14.7 Obligations Upon Receipt of Termination Notice. Upon receipt of a notice of termination as set forth above, the Consultant shall (A) immediately discontinue all Services affected (unless the notice directs otherwise), and (B) deliver to the Town copies of all data, reports, calculations, drawings, specifications, and estimates entirely or partially completed, together with all unused materials supplied by the Town, related to the Services including any completed divisible part of the Services which can be deemed to stand alone (the completed divisible parts of the Services will be determined by both Parties at the time of termination). Such termination shall not relieve the Consultant of liability for errors and omissions. Any use of incomplete documents for the Services or for any other project without the specific written authorization by the Consultant will be without liability or legal exposure to the Consultant. The Consultant shall appraise the work it has completed and submit the appraisal to the Town for evaluation.

15. Suspension of Work.

15.1 Order to Suspend. The Town may, for its convenience, order the Consultant, in writing, to suspend all or any part of the Services for such period of time as it may determine to be appropriate.

15.2 Adjustment to Agreement Sum. If the performance of all or any part of the Services is, for any unreasonable period of time, suspended or delayed by an act of the Town in the administration of this Agreement, or by its failure to act within the time specified in this Agreement (or if no time is specified, within a reasonable time), an adjustment shall be made for any increase in the cost of performance of this Agreement necessarily caused by such unreasonable suspension or modified in writing accordingly. However, no adjustment shall be made under this clause for any suspension or delay (A) to the extent that

performance was suspended or delayed for any other cause, including the fault or negligence of the Consultant, or (B) for which a change order is executed.

16. Miscellaneous.

16.1 Independent Contractor. It is clearly understood that each Party will act 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 shall not be deemed or construed to be the employee or agent of the other for any purpose whatsoever. The Consultant acknowledges and agrees that the Services provided under this Agreement are being provided as an independent contractor, not as an employee or agent of the Town. The Consultant, its employees, and subcontractors are not entitled to workers' compensation benefits from the Town. The Town does not have the authority to supervise or control the actual work of the Consultant, its employees, or subcontractors. The Consultant, and not the Town, shall determine the time of its performance of the services provided under this Agreement so long as the Consultant meets the requirements of its agreed Scope of Work as set forth in Section 2 and in Exhibit A. The Consultant is neither prohibited from entering into other contracts nor prohibited from practicing its profession elsewhere. The Parties do not intend to nor will they combine business operations under this Agreement.

16.2 Applicable Law; Venue. This Agreement shall be governed by the laws of the State of Arizona, and suit pertaining to this Agreement may be brought only in courts in Yavapai County, Arizona.

16.3 Laws and Regulations. The Consultant shall keep fully informed and shall at all times during the performance of its duties under this Agreement ensure that it and any person for whom the Consultant is responsible abides by, and remains in compliance with, all rules, regulations, ordinances, statutes, or laws affecting the Services, including, but not limited to, (A) existing and future Town and County ordinances and regulations, (B) existing and future State and Federal laws, and (C) existing and future OSHA standards.

16.4 Amendments. This Agreement may be modified only by a written amendment signed by persons duly authorized to enter into contracts on behalf of the Parties.

16.5 Provisions Required by Law. Each and every provision of law and any clause required by law to be in this 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, this Agreement will promptly be physically amended to make such insertion or correction.

16.6 Severability. The provisions of this Agreement are severable to the extent that any provision or application held to be invalid by a Court of competent jurisdiction shall not affect any other provision or application of this Agreement that may remain in effect without the invalid provision or application.

16.7 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 any of 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 this Agreement. The Parties acknowledge and agree that each has had the opportunity to seek and utilize legal counsel in the drafting and reviewing of, and entry into, this Agreement.

16.8 Assignment; Delegation. No right or interest in this Agreement shall be assigned or delegated by the Consultant without prior, written permission of the Town, signed by the Town Manager. Any attempted assignment or delegation by the Consultant in violation of this provision shall be a breach of this Agreement by the Consultant.

16.9 Subcontracts. No subcontract shall be entered into by the Consultant with any other party to furnish any of the material or services specified herein without the prior written approval of the Town. The Consultant is responsible for performance under this Agreement whether or not subcontractors are used. Failure to pay subcontractors in a timely manner pursuant to any subcontract shall be a material breach of this Agreement by the Consultant.

16.10 Rights and Remedies. No provision in this Agreement shall be construed, expressly or by implication, as waiver by the Town of any existing or future right and/or remedy available by law in the event of any claim of default or breach of this Agreement. The failure of the Town to insist upon the strict performance of any term or condition of this Agreement or to exercise or delay the exercise of any right or remedy provided in this Agreement, or by law, or the Town's acceptance of and payment for Services, shall not release the Consultant from any responsibilities or obligations imposed by this Agreement or by law, and shall not be deemed a waiver of any right of the Town to insist upon the strict performance of this Agreement.

16.11 Attorneys' Fees. In the event either Party brings any action for any relief, declaratory or otherwise, arising out of this Agreement or on account of any breach or default hereof, the prevailing Party shall be entitled to receive from the other Party reasonable attorneys' fees and reasonable costs and expenses, determined by the court

sitting without a jury, which shall be deemed to have accrued on the commencement of such action and shall be enforced whether or not such action is prosecuted through judgment.

16.12 Liens. All materials or services shall be free of all liens and, if the Town requests, a formal release of all liens shall be delivered to the Town.

16.13 Offset.

A. Offset for Damages. In addition to all other remedies at law or equity, the Town may offset from any money due to the Consultant any amounts the Consultant owes to the Town for damages that have been reduced to a judgment resulting from breach or deficiencies in performance or breach of any obligation under this Agreement.

B. Offset for Delinquent Fees or Taxes. The Town may offset from any money due to the Consultant any amounts the Consultant owes to the Town for delinquent fees, transaction privilege use taxes, and property taxes, including any interest or penalties.

16.14 Notices and Requests. Any notice or other communication required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given if (A) delivered to the Party at the address set forth below, (B) deposited in the U.S. Mail, registered or certified, return receipt requested, to the address set forth below, or (C) given to a recognized and reputable overnight delivery service, to the address set forth below, or at such other address, and to the attention of such other person or officer, as any Party may designate in writing by notice duly given pursuant to this subsection:

If to the Town: Town of Chino Valley
 202 North State Route 89
 Chino Valley, Arizona 86323
 Attn: Terri Denemy, Town Manager

With copy to: GUST ROSENFELD P.L.C.
 One East Washington Street, Suite 1600
 Phoenix, Arizona 85004-2553
 Attn: Andrew J. McGuire

If to Consultant: Montgomery & Associates, Inc.
 1550 East Prince Road
 Tucson, AZ 85719
 Attn: Hale Barter

Notices shall be deemed received (A) when delivered to the Party, (B) three business days after being placed in the U.S. Mail, properly addressed, with sufficient postage, or (C) the following business day after being given to a recognized overnight delivery service, with the person giving the notice paying all required charges and instructing the delivery service to deliver on the following business day. If a copy of a notice is also given to a Party's counsel or other recipient, the provisions above governing the date on which a notice is deemed to have been received by a Party shall mean and refer to the date on which the Party, and not its counsel or other recipient to which a copy of the notice may be sent, is deemed to have received the notice.

16.15 Confidentiality of Records. The Consultant shall establish and maintain procedures and controls that are acceptable to the Town for the purpose of ensuring that information contained in its records or obtained from the Town or from others in carrying out its obligations under this Agreement shall not be used or disclosed by it, its agents, officers, or employees, except as required to perform the Consultant's duties under this Agreement. Persons requesting such information should be referred to the Town. The Consultant also agrees that any information pertaining to individual persons shall not be divulged other than to employees or officers of the Consultant as needed for the performance of duties under this Agreement.

16.16 Information Technology.

A. Limited Access. If necessary for the fulfillment of this Agreement, the Town may provide the Consultant with non-exclusive, limited access to the Town's information technology infrastructure. The Consultant understands and agrees to abide by all Town policies, standards, regulations, and restrictions regarding access and usage of the Town's information and communication technology resources. The Consultant shall enforce all such policies, standards, regulations, and restrictions with all the Consultant's employees, agents, or any tier of subcontractor granted access in the performance of this Agreement and shall be granted and authorized only such access as may be necessary for the purpose of fulfilling the requirements of this Agreement.

B. Permitted Access. The Consultant's employees, agents, and subcontractors must receive prior, written approval from the Town before being granted access to the Town's information and communication technology resources and data. The Town, in its sole discretion, shall determine accessibility and limitations thereto. The Consultant agrees that the requirements of this Section shall be incorporated into all subcontractor/subconsultant agreements entered into by the Consultant. It is further agreed that a violation of this Section shall be deemed to cause irreparable harm that justifies injunctive relief in court. Notwithstanding the provisions in Section 14, a violation of this Section may result in immediate termination of this Agreement without notice.

C. Data Confidentiality. All Town data and technical information, regardless of form, including originals, images, and reproductions, prepared by, obtained by, or transmitted to the Consultant in connection with this Agreement, are confidential, proprietary information owned by the Town. Except as specifically provided in this Agreement, the Consultant shall not, without the prior, written consent of the Town Manager or authorized designee, (1) disclose data generated in the performance of the Services to any third party, or (2) use Town data and information.

D. Data Security. Personal identifying information, financial account information, or restricted Town information, whether in electronic format or hard copy, must be secured and protected at all times to avoid unauthorized access. At a minimum, the Consultant must encrypt and/or password-protect electronic files. This includes data saved to laptop computers, computerized devices, or removable storage devices. When Town information, regardless of its format, is no longer required by the Consultant to execute the work contracted by the Town, the information must be redacted or destroyed through appropriate and secure methods to ensure the information cannot be viewed, accessed, or reconstructed.

E. Compromised Security. In the event that data collected or obtained by the Consultant in connection with this Agreement is believed to have been compromised, the Consultant shall immediately notify the Town Manager or authorized Town designee. The Consultant agrees to reimburse the Town for any costs incurred by the Town to investigate potential breaches of this data by the Consultant and, where applicable, the cost of notifying and/or assisting individuals who may be impacted by the breach.

F. Disengagement. In the event this Agreement is terminated by either Party, the Consultant agrees to confer back to the Town all of its data, in usable and normalized format, within 30 days of notice of termination. There shall be no charge for the return of Town data to the Town.

G. Survival. The obligations of the Consultant under this Section 16.16 shall survive the termination of this Agreement.

16.17 Records and Audit Rights. To ensure that the Consultant and its subcontractors are complying with the warranty under subsection 16.18, the Consultant's and its subcontractor's books, records, correspondence, accounting procedures and practices, and any other supporting evidence relating to this Agreement, including the papers of any of the Consultant's and its subcontractors' employees who perform any work or services pursuant to this Agreement (all of the foregoing hereinafter referred to as "Records"), shall be open to inspection and subject to audit and/or reproduction during

normal working hours by the Town, to the extent necessary to adequately permit (A) evaluation and verification of any invoices, payments or claims based on the Consultant's and its subcontractors' actual costs (including direct and indirect costs and overhead allocations) incurred, or units expended directly in the performance of work under this Agreement and (B) evaluation of the Consultant's and its subcontractors' compliance with the Arizona employer sanctions laws referenced in subsection 16.18. To the extent necessary for the Town to audit Records as set forth in this subsection, the Consultant and its subcontractors hereby waive any rights to keep such Records confidential. For the purpose of evaluating or verifying such actual or claimed costs or units expended, the Town shall have access to said Records, even if located at its subcontractors' facilities, from the effective date of this Agreement for the duration of the work and until three years after the date of final payment by the Town to the Consultant pursuant to this Agreement. The Consultant and its subcontractors shall provide the Town with adequate and appropriate workspace so that the Town can conduct audits in compliance with the provisions of this subsection. The Town shall give the Consultant or its subcontractors reasonable advance notice of intended audits. The Consultant shall require its subcontractors to comply with the provisions of this subsection by insertion of the requirements hereof in any subcontract pursuant to this Agreement.

16.18 E-Verify Requirements. To the extent applicable under ARIZ. REV. STAT. § 41-4401, the Consultant and its subcontractors warrant compliance with all federal immigration laws and regulations that relate to their employees and their compliance with the E-Verify requirements under ARIZ. REV. STAT. § 23-214(A). The Consultant's or its subcontractor's failure to comply with such warranty shall be deemed a material breach of this Agreement and may result in the termination of this Agreement by the Town.

16.19 Israel. To the extent applicable under ARIZ. REV. STAT. § 35-393 through § 35-393.03, the Parties hereby certify that they are not currently engaged in, and agree to not engage in for the duration of this Agreement, a "boycott" of goods or services from Israel, as that term is defined in ARIZ. REV. STAT. § 35-393.

16.20 Conflicting Terms. In the event of any inconsistency, conflict, or ambiguity among the terms of this Agreement, any amendments, the Scope of Work, any Town-approved purchase order, or the Fee Proposal, the documents shall govern in the order listed herein.

16.21 Time is of the Essence. The timely completion of the Services is of critical importance to the economic circumstances of the Town.

16.22 Meaning of Terms. References made in the singular shall include the plural, and the masculine shall include the feminine or the neuter.

16.23 Non-Exclusive Contract. This Agreement is entered into with the understanding and agreement that it is for the sole convenience of the Town. The Town reserves the right to obtain like goods and services from another source when necessary.

16.24 Forced Labor of Ethnic Uyghurs. To the extent applicable under ARIZ. REV. STAT. § 35-394, the Consultant warrants and certifies that it does not currently, and agrees that it will not for the duration of this Agreement use the forced labor, any goods or services produced by the forced labor, or any contractors, subcontractors, or suppliers that use the forced labor or any goods or services produced by the forced labor of ethnic Uyghurs in the People's Republic of China. If the Consultant becomes aware that it is not in compliance with this paragraph, the Consultant shall notify the Town of the noncompliance within five business days of becoming aware of it. If the Consultant fails to provide a written certification that it has remedied the noncompliance within 180 days after that, this Agreement shall terminate unless the termination date of this Agreement occurs before the end of the remedy, in which case this Agreement terminates on its termination date.

16.25 Counterparts. This Agreement may be executed simultaneously or in counterparts, each of which constitutes an original, but all of which together constitute one and the same agreement.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date and year first set forth above.

"Town"

TOWN OF CHINO VALLEY,
an Arizona municipal corporation

Jack W. Miller, Mayor

ATTEST:

Erin N. Deskins, Town Clerk

APPROVED AS TO FORM:

Andrew J. McGuire, Town Attorney
Gust Rosenfeld, PLC

"Consultant"

ERROL L. MONTGOMERY & ASSOCIATES,
an Arizona corporation d/b/a
MONTGOMERY & ASSOCIATES

Signature

Name

Title

EXHIBIT A
TO
PROFESSIONAL SERVICES AGREEMENT
BETWEEN
THE TOWN OF CHINO VALLEY
AND
MONTGOMERY & ASSOCIATES, INC.

[Scope of Work and Fee Schedule]

See following pages.



July 12, 2024

Mark Holmes, Town Water Advisor
c/o Town of Chino Valley
202 North State Route 89
Chino Valley, AZ 86323

SUBJECT: SCOPE OF WORK AND ESTIMATED COSTS FOR CAPTURE ZONE ANALYSES IN SUPPORT OF WELLHEAD PROTECTION STUDY

Dear Mr. Holmes:

Montgomery & Associates (M&A) has prepared this scope of work and estimated cost for groundwater modeling in support of a wellhead protection study for water supply wells owned by the Town of Chino Valley (the Town). Particle tracking will be used to delineate the capture zone for each supply well of interest. The numerical model used for the Town's underground storage facility (USF) permit renewal for Old Home Manor will be the basis for the capture zone analyses.

SCOPE OF WORK

M&A's services for the capture zone analyses will include the following 3 Tasks:

Task 1: Project Planning, Coordination, and Meetings

Task 2: Model Preparation and Capture Zone Analyses

Task 3: Technical Memorandum

Task 1: Project Planning, Coordination, and Meetings

The objective of Task 1 is to compile and review relevant information and coordinate with representatives of the Town, Tetra Tech, and Arizona Department of Environmental Quality (ADEQ) as needed to plan capture zone analyses for the wellhead protection study. The proposed scope of work includes the following:

- Review information developed by others regarding wellhead protection objectives and potential contaminant sources
- Develop modeling scenarios in coordination with the Town and others involved in the wellhead protection study

Task 2: Model Preparation and Capture Zone Analyses

Task 2 involves modifying and applying the MODFLOW model M&A is using to support the Town's Old Home Manor USF renewal application. This model simulates transient groundwater conditions from 1939 through 2021, a catch-up period from 2022 through 2024, and a projection period from 2025 through 2044. We anticipate that some minor modifications may be needed, such as to the duration of the predictive simulations, future pumping rates for the Town's wells, and Old Home Manor USF recharge rates. It is assumed that no modifications will be made to the model grid, aquifer hydraulic parameters, external boundary conditions, and pumping rates for wells not owned by the Town.

Particle path simulations will be conducted by using MODFLOW to project future aquifer hydraulic heads and MODPATH to project capture zones for various future timeframes for the Town's supply wells pumping. MODPATH input for effective porosity of the aquifer will be identified based on general lithology of principal hydrogeologic units penetrated by the Town's supply wells.

Task 3: Technical Memorandum

Task 3 involves preparation of a technical memorandum documenting methods and results of the capture zone analyses, including the following:

- Summary of wellhead protection objectives and potential contaminant sources (to be developed by others)
- Descriptions of modeling scenarios and wells of interest for capture zone analyses
- Documentation of MODPATH input for effective porosity
- Map(s) showing results of particle path simulations to illustrate capture zones for various time periods for each well of interest
- Narrative descriptions of results of capture zone analyses

ESTIMATED COSTS AND SCHEDULE

The estimated cost to complete Tasks 1 through 3 is \$25,000, summarized in Table 1. These costs are in accordance with the attached 2024 Fee Schedule and are based on estimated hours for M&A personnel to complete the work.

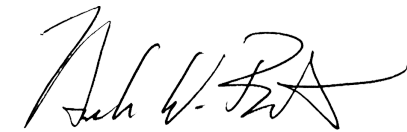
Table 1. Estimated Costs

		Estimated Hours						Estimated Professional Fees
		Scientist 8	Scientist 6	Scientist 4	Scientific Illustrator 2	Technical Editor	Total Hours	
I2024 Professional Billing Rates		\$238	\$216	\$178	\$108	\$74		
Task 1	Data Review and Pre-application Meeting	12	0	16	0	0	28	\$ 5,800
Task 2	Model Preparation and Capture Zone Analyses	8	0	32	0	0	40	\$ 7,600
Task 3	Technical Memorandum	16	0	32	17	4	69	\$ 11,600
TOTALS:		36	0	80	17	4	137	\$ 25,000

M&A anticipates that Tasks 1 through 3 will be completed within approximately 2 months after submittal of the Old Home Manor USF permit renewal application to Arizona Department of Water Resources (ADWR). We understand the current USF permit expires on March 3, 2025. The hydrologic report and application for the USF permit renewal will be submitted to ADWR before March 2025. Therefore, wellhead protection study would be completed by the end of April 2025 at the latest.

Thank you for the opportunity to provide this scope of work for the Town of Chino Valley. Please contact us if you have any questions or require further information.

Sincerely,
 MONTGOMERY & ASSOCIATES



Hale Barter
 President / Groundwater Hydrologist
 hbarter@elmontgomery.com



Ben Krisanto Paras
 Groundwater Hydrologist
 bkparas@elmontgomery.com

Attachment: M&A 2024 Schedule of Fees and Expenses

2024 SCHEDULE OF FEES AND EXPENSES

PROFESSIONAL FEES*	Hourly Rate (\$)
Scientist 9	293
Scientist 8	238
Scientist 7	227
Scientist 6	216
Scientist 5	197
Scientist 4	178
Scientist 3	158
Scientist 2	137
Scientist 1	117
Health & Safety Coordinator	216
Senior Programming Specialist	222
Computer Programmer 2	190
Computer Programmer 1	160
Senior Water Policy/Economics Specialist	256
Water Policy/Economics Specialist 2	218
Water Policy/Economics Specialist 1	201
Drilling Specialist 2	153
Drilling Specialist 1	137
Hydrologic Technician 2	123
Hydrologic Technician 1	103
Hydrologic Assistant	87
GIS & Data Coordinator	175
GIS & Data Specialist 2	145
GIS & Data Specialist 1	120
Scientific Illustrator 2	108
Scientific Illustrator 1	92
Contract Administrator	83
Technical Editor	74
Clerical	58
EXPENSES	
Airline travel, ZipCar, and auto rental	Cost
Lodging and subsistence	Cost
Copying, printing, long distance calls, shipping, field supplies	Cost
Subcontractor services	Cost, plus 10%
Laboratory services	Cost, plus 10%
Montgomery & Associates vehicles	
Standard	\$0.67/mile
4-wheel drive or high clearance 2-wheel drive for off-road use	\$0.87/mile

Notes:

- Expert testimony charged at 1.5 times hourly rate. Includes testimony in a trial, hearing, or deposition, and time spent in testimony rehearsal sessions with counsel.
- *Scientist includes hydrogeologist, hydrologist, geologist, engineer, soil scientist, and chemist.

Invoices are issued on a monthly basis and are due upon receipt for payment within 30 days.
If payment has not been received within 30 days,
interest will accrue at 1% per month for unpaid balance.



TOWN COUNCIL AGENDA ITEM STAFF REPORT

AGENDA ITEM # 6c
MEETING DATE: 11/12/2024
CONTACT PERSON: Terri Denemy, Acting Town Manager, Frank Marbury, Public Works Director/Town Engineer
ITEM TYPE: Action Item

AGENDA ITEM TITLE:

Consideration and possible action to adopt Ordinance No. 2024-948 authorizing the acquisition of certain real property for use as a municipal cemetery.

SUMMARY:

In 2008 the Chino Valley Irrigation District (CVID) conveyed its property generally located at 1250 W. Road 2 South, and commonly known as the Chino Valley Cemetery, to the Chino Valley Cemetery Association (CVCA), an Arizona nonprofit corporation. CVCA Board has owned and operated the cemetery on a voluntary basis since that time. In 1984, enough donations were collected by CVCA to purchase an additional 1/3 acre to the east to expand the site to its current size of approximately 1.54 acres.

The Chino Valley Cemetery operates as a simple, traditional, western desert cemetery. There are approximately 1,160 graves on site. The oldest identified interment is dated 1922, although there are a number of unmarked graves that may predate that individual. The cemetery has enough available space to continue to accept new interments for another three - five years. The number of cremain and companion graves will extend or contract availability. Along with conveyance of the property, CVID donated \$100,000 to CVCA for the cemetery's perpetual care and maintenance. It is CVCA's intention to transfer those funds along with the real property to the Town for that continued purpose. As the site has historic significance and intrinsic municipal value, the Town finds that acquisition of the Chino Valley Cemetery property and operations for use as a municipal cemetery is in the public's best interest. The town is in the best position to properly care for the property and those interred there over the long term. For these reasons, staff is recommending Council authorize the acquisition of the CVCA property for use as a municipal cemetery.

PREVIOUS ACTION:

STAFF RECOMMENDATION:

Approve Ordinance No. 2024-948.

FISCAL IMPACT?

N/A

ATTACHMENTS:

1.	ORD - 2024-948 - Authorizing Acquisition of the Cemetery (003)(6364701.3)
2.	Exhibit 1 - Legal Description and Depiction

When recorded, return to:
Town Clerk
Town of Chino Valley
202 N. State Route 89
Chino Valley, Arizona 86323

ORDINANCE NO. 2024-948

**AN ORDINANCE OF THE MAYOR AND COMMON COUNCIL OF THE TOWN
OF CHINO VALLEY, ARIZONA, AUTHORIZING THE ACQUISITION OF
CERTAIN REAL PROPERTY FOR USE AS A MUNICIPAL CEMETERY.**

WHEREAS, the Chino Valley Cemetery, an Arizona nonprofit corporation ("CVC"), wishes to convey to the Town of Chino Valley (the "Town") certain real property comprising Yavapai County Assessor's Parcel No. 306-31-004B and generally located at 1250 West Road 2 South in Chino Valley, Arizona, 86323, as described and depicted in Exhibit 1, attached hereto and incorporated herein by reference (the "Property"); and

WHEREAS, the Mayor and Common Council of the Town (the "Town Council") finds that acquisition of the Property for use as a municipal cemetery is in the public interest; and

WHEREAS, the Town Council wishes to acquire the Property from CVC by donation or purchase for use as a municipal cemetery, subject to Town Council approval of a real estate conveyance instrument and acceptance of the Property.

NOW, THEREFORE, BE IT ORDAINED by the Mayor and Common Council of the Town of Chino Valley, Arizona, as follows:

SECTION 1. The recitals above are hereby incorporated as if fully set forth herein.

SECTION 2. The Town Manager or designee is hereby authorized and directed to conduct such due diligence as necessary and cause to be prepared such real estate conveyance instruments as necessary to acquire the Property on behalf of the town, by donation or purchase, for public use as a municipal cemetery.

SECTION 3. Conveyance of the Property to the Town is subject to the approval of the Town Council in its sole and absolute discretion.

SECTION 4. The Mayor, the Town Manager, the Town Clerk, and the Town Attorney are hereby authorized and directed to take all steps necessary to carry out the purpose and intent of this ordinance.

[SIGNATURES FOLLOW]

PASSED AND ADOPTED by the Mayor and Common Council of the Town of Chino Valley, Arizona, this 12th day of November 2024.

Jack W. Miller, Mayor

ATTEST:

Erin N. Deskins, Town Clerk

APPROVED AS TO FORM:

Andrew J. McGuire, Town Attorney
Gust Rosenfeld P.L.C.

I hereby certify that the foregoing Ordinance No. 2024-948 was duly passed by the Council of the Town of Chino Valley, Arizona, at a meeting held on November 12, 2024, and that quorum was present, and that the vote thereon was ____ ayes, ____ nays, and ____ abstentions. ____ Council members were absent or excused.

Erin N. Deskins, Town Clerk

EXHIBIT 1
TO
ORDINANCE 2024-948

[Legal Description and Depiction]

See the following pages.

EXHIBIT "A"
CHINO VALLEY CEMETERY
LAND DESCRIPTION

A PORTION OF THE SOUTHEAST QUARTER OF SECTION 28, TOWNSHIP 16 NORTH, RANGE 2 WEST OF THE GILA AND SALT RIVER BASE AND MERIDIAN, TOWN OF CHINO VALLEY, YAVAPAI COUNTY, STATE OF ARIZONA, MORE PARTICULARLY DESCRIBED AS FOLLOWS....

COMMENCING AT THE SOUTHEAST CORNER OF SAID SECTION 28;

THENCE ALONG THE SOUTHERLY LINE OF SAID SECTION SOUTH 88° 42' 20" WEST (BASIS OF BEARING) A DISTANCE OF 1,262.99 FEET TO THE WESTERLY LINE OF PARCEL 1 RECORDED AS DOCUMENT 2020-0076759, OFFICIAL RECORDS, AND THE **POINT OF BEGINNING**;

THENCE CONTINUING ALONG SAID SOUTHERLY LINE OF SAID SECTION SOUTH 88° 42' 20" WEST A DISTANCE OF 296.00 FEET TO THE SOUTHEASTERLY CORNER OF PARCEL 8, ANGUS ACRES, RECORDED IN BOOK 2, PAGE 100 OF LAND SURVEYS, OFFICIAL RECORDS;

THENCE ALONG THE EAST LINE OF SAID PARCEL 8 NORTH 01° 52' 26" WEST, A DISTANCE OF 253.00 FEET TO THE NORTHWEST CORNER OF THE EXCEPTION TO SAID PARCEL 8;

THENCE ALONG THE NORTH LINE OF SAID EXCEPTION NORTH 88° 42' 20" EAST A DISTANCE OF 296.00 FEET TO SAID WESTERLY LINE OF SAID PARCEL 1;

THENCE ALONG SAID WESTERLY LINE SOUTH 01° 52' 26" EAST A DISTANCE OF 253.00 FEET TO THE **POINT OF BEGINNING**.

EXCEPT THE SOUTH 25.00 FEET THEREOF DEDICATED TO THE TOWN OF CHINO VALLEY, RECORDED IN BOOK 2314, PAGE 668 AND IN BOOK 2340, PAGE 921 OF OFFICIAL RECORDS OF YAVAPAI COUNTY.

CONTAINING 67,484 SQUARE FEET, 1.549 ACRES, MORE OR LESS.

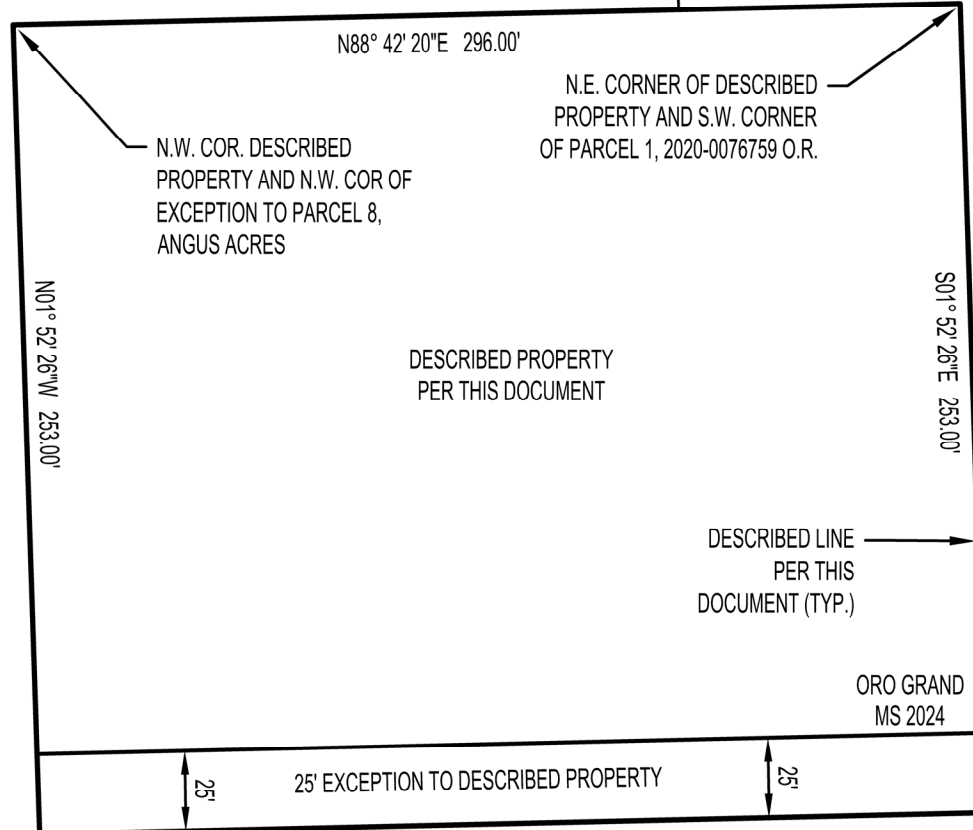


PARCEL 8, ANGUS ACRES
BOOK 2, PAGE 100 LAND SURVEYS
Y.C.R.O.

E'LY LINE PARCEL 8,
ANGUS ACRES

SEC. 28
T 16 N
R 2 W

PARCEL 1,
2020-0076759
Y.C.R.O.



DESCRIBED LINE
PER THIS
DOCUMENT (TYP.)

ORO GRAND
MS 2024

P.O.B. AND SLY COR.
2020-0076759 O.R.

S88° 42' 20" W 1,262.99'
(BASIS OF BEARING)

P.O.C. AND SOUTHEAST
CORNER OF SECTION 28

S.W. CORNER OF DESCRIBED
PROPERTY AND S.E. CORNER
OF PARCEL 8, ANGUS ACRES

ROAD 2 SOUTH TOWN OF CHINO VALLEY



CONTAINING 67,484 SQUARE FEET,
OR 1.549 ACRES, MORE OR LESS.



Civil, Water, Wastewater, Drainage,
and Transportation Engineering
Construction Management • Surveying
California • Arizona

CHINO VALLEY, ARIZONA

EXHIBIT B
CHINO VALLEY CEMETERY
LEGAL DESCRIPTION

DE: BIT CH: BIT DR: BIT JN: 2023730.00 SHEET 1 OF 1



TOWN COUNCIL AGENDA ITEM STAFF REPORT

AGENDA ITEM # 6d
MEETING DATE: 11/12/2024
CONTACT PERSON: Laura Kyriakakis, Human Resources Director
ITEM TYPE: Action Item

AGENDA ITEM TITLE:

Consideration and possible action to approve the Town Manager Employment Agreement with Terri Denemy.

SUMMARY:

N/A

PREVIOUS ACTION:

N/A

STAFF RECOMMENDATION:

Approve the Town Manager Employment Agreement with Terri Denemy.

FISCAL IMPACT?

This is a budgeted position. The fiscal impact will be determined following final contract negotiation and approvals.

ATTACHMENTS:

1.	AGR - Dememy Employment Agreement 2024
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**EMPLOYMENT AGREEMENT
BETWEEN
THE TOWN OF CHINO VALLEY
AND
TERRI DENEMY**

THIS EMPLOYMENT AGREEMENT (this “**Agreement**”) is made and entered into as of November 12, 2024, by and between the Town of Chino Valley, an Arizona municipal corporation (the “**Town**”) and Terri Denemy (the “**Manager**”).

RECITALS

A. The Mayor and Council of the Town of Chino Valley (the “**Town Council**”) and the Manager desire to enter into this Agreement to provide certain benefits, to establish certain conditions of employment and to set working conditions for the Manager to serve as Town Manager for the Town as provided by Section 31.20 of the Chino Valley Town Code (the “**Town Code**”).

B. The parties acknowledge that the Manager has agreed to abide by the International City/County Managers Association (“**ICMA**”) Code of Ethics.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing introduction and recitals, which are hereby incorporated into and are deemed an integral part of this Agreement, the mutual covenants set forth below and other good and valuable consideration, the receipt and sufficiency of which are mutually acknowledged by the parties hereto, the Town and the Manager hereby agree as follows:

1. Town Manager Obligations.

1.1 Duties. The Manager shall perform the functions and duties specified for the Town Manager in the Town Code and shall perform other legally permissible and proper duties required by law, ordinance or code and functions as the Town Council shall from time-to-time assign. The job of Town Manager is a salaried position for which the work week is not necessarily limited to 40 hours. Moreover, the parties recognize that the Manager must devote a great deal of time outside normal office hours to the business of the Town. It is therefore agreed and understood that the Manager shall work full time but that she shall be allowed to adjust her office hours as reasonable and necessary to conduct the business and affairs of the Town so that the Manager is able, for example, to attend all appropriate board meetings and all Town Council meetings. The Town Council recognizes that the Manager is a salaried employee and must devote a great deal of time beyond the normal office hours to business of the Town and, to that end, the Manager will be allowed to take reasonable time off as she shall deem appropriate during said normal office hours.

1.2 Exclusive Employment. The Town and the Manager agree that the Manager shall, from the Manager's first date serving as the Town Manager, November 12, 2024 (the "**Start Date**"), and thereafter during the term of this Agreement, be in the exclusive employ of the Town and shall not accept other employment or carry out any other business except that of the position of the Town Manager unless authorized to do so by the Town Council, in writing, prior to the Manager engaging in such other activity; provided, however, that any such additional duties shall be conducted on the Manager's vacation time and without the use of Town resources or equipment. The term "exclusive employ" shall not be construed to preclude occasional teaching, writing, speaking, or consulting performed on the Manager's time off, even if outside compensation is provided for such services. Such activities are expressly allowed, provided the Manager does not engage in activity involving any prohibited conflict of interest with the Town and such activities do not materially detract from the Manager's performance of her duties for the Town.

1.3 Residency Requirement. The Town Council believes the Manager will be more knowledgeable regarding the needs of the Town and its citizenry and better able to meet those needs if she resides full time within the Tri-City/Yavapai County area as required by Town Code § 31.20(B). The Manager agrees to relocate to, within one year of appointment, and to thereafter reside within, the Tri-City/Yavapai County area on a full-time basis at all times while this Agreement is in effect, the Town shall compensate the Manager up to \$4,000.00 to cover all moving expenses to move within the Tri-City/Yavapai County Area; failure to relocate shall be considered good cause for termination.

2. Term; Continuation. This Agreement shall be effective as of November 10, 2024, and shall remain in full force and effect until June 30, 2027 (the "**Termination Date**"), subject to continuation or termination as set forth herein. This Agreement shall be extended on the same terms and conditions as set forth herein for additional one-year periods (the last day of each such additional one-year period to be considered a "**Subsequent Termination Date**") unless either party hereto gives written notice to the other at least 60 days prior to the Termination Date or Subsequent Termination Date, as the case may be, that the noticing party does not wish to extend this Agreement beyond the applicable Termination Date or Subsequent Termination Date.

3. Termination. The Manager serves at the pleasure of the Town Council and may be removed without cause as provided in ARIZ. REV. STAT. § 9-303(C). Nothing in this Agreement shall prevent, limit, or otherwise interfere with the right of the Town Council to terminate the services of the Manager at any time. This Agreement may be terminated by the Town with or without cause at any time, subject only to Section 31.20 of the Town Code and the severance provisions set forth in subsection 3.2 below. The Manager may terminate this Agreement at any time, with or without cause, upon not less than 60 days' written notice to the Town Council; the Town Council, in its sole discretion, may allow for a shorter notice period.

3.1 Severance With Cause. If the Town Council terminates this Agreement with cause, no portion of severance pay will be paid to the Manager unless otherwise approved by the Town Council in its sole discretion. For the purposes of this Agreement, "with cause" shall mean that the Town Council, at a duly posted public meeting, has determined that the Manager has (A) committed an act of gross insubordination by refusing to take a legal, valid action that is clearly within the scope of her employment when specifically directed to do so by a majority of

the Town Council at a duly posted public meeting, (B) been incarcerated and charged with a felony as defined in Arizona Revised Statutes (the Town Council may choose to suspend the Manager with pay during the pendency of any such prosecution), (C) either in her personal or professional capacity, severely damaged the reputation of the Town or the Town Council, (D) materially failed to perform a significant portion of her duties as the Town Manager as set forth in this Agreement, (E) caused or by gross negligence allowed any practice, activity, decision or organizational circumstance that is either illegal or immoral, (F) violated provisions of the ICMA Code of Ethics, (G) committed malfeasance in office or willful breach or habitual neglect of the duties described in Section 31.20 of the Town Code, (H) committed material act(s) or omission(s) that are recognizable as a conflict of interest under Arizona law, (I) behaved in a manner constituting grounds for termination of a contract under applicable Arizona statutes or case law, or (J) failed consistently to perform the job of Town Manager in a reasonable, professional, and adequate fashion, when such failure continues or reoccurs after 10 days' written notice that such failure is unacceptable, as determined by a majority of the Town Council voting at a public meeting held in compliance with Arizona law.

3.2 Severance Without Cause.

A. Amount of Severance; Conditions. In the event the Town Council terminates this Agreement without cause, it shall provide the Manager with 30 days' notice and the Manager shall be entitled to severance pay in an amount equal to four months of her annual base salary, benefits and allowances (including any automobile and cellular telephone allowance granted by the Town Council pursuant to subsection 6.4 below), including pay-out of accrued vacation and sick leave at the then-current rates set forth for all Town employees in the Town's Personnel Manual (as defined below) at the time of such termination. The Manager shall receive one additional month of severance for each year of continuous service after the Termination Date, up to a maximum additional three months, pursuant to the terms herein. The Manager shall not be entitled to additional benefits after the date of termination other than COBRA benefits. Payment of any such severance shall be contingent upon all of the following:

(1) The Manager executing a severance agreement acceptable to both parties, which shall include the Manager's (a) full release of the Town and all its agents and employees from any and all claims, including but not limited to, demands, damages, causes of action or liability arising out of the Manager's employment or termination of employment with Town, (b) agreement not to initiate or cause to be initiated under any lawsuit, claim, grievance proceeding or investigation of any kind, under any contract, law or regulation, pertaining to her employment with the Town and (c) acknowledgement that the Town will provide no more than neutral references for the Manager, but that the Town may be required to disclose any and all records related to such termination pursuant to a valid request for public records.

(2) The Manager making herself reasonably available as needed by the Town for consulting purposes for a period of time equal to the number of months of severance paid.

B. Elements of Severance Without Cause. It shall be deemed severance without cause if, at any time during the term of this Agreement the Town Council (1) reduces the Manager's salary or other financial benefits in a greater percentage than an applicable across-the-board reduction for all Town employees, (2) reassigns the Manager from the position of Town Manager to another position without her express, written consent, or (3) refuses to comply with a material term of this Agreement within 30 days after written notice from the Manager.

C. Termination of Fringe Benefits. If the Manager's employment is terminated pursuant to this subsection 3.2, all fringe benefits furnished by the Town shall terminate after 30 days from the date of termination of this Agreement.

3.3. Voluntary Resignation. In the event the Manager voluntarily terminates this Agreement for any reason, she shall not be entitled to severance pay, unless otherwise approved by the Town Council in its sole discretion.

3.4 Forced Resignation. In the event of a suggestion, either formal or informal, by one or more members of the Town Council, including the Mayor, that she resign, the Manager may require that the Town Council and the Manager meet and discuss the matter in an effort to resolve any disagreement or misunderstanding that led to the suggestion of resignation, subject to compliance with the Open Meeting Law and other applicable laws. If the Manager resigns following an offer to accept resignation by a majority of the Town Council, whether formal or informal, then she may declare a termination as of the date of the acceptance and collect all severance benefits as outlined in this Agreement, unless otherwise agreed by the Manager and the Town.

4. Suspension. If the Town Council has made a determination that "for cause" termination is appropriate as set forth in subsection 3.1 above, the Town Council may, in its sole discretion, as an alternative to termination, suspend the Manager without pay for a period of up to 30 days.

5. Disability. If the Manager is permanently disabled or is otherwise unable to fulfill her duties hereunder due to sickness, accident, injury, health or mental incapacity for a period of four consecutive weeks beyond any accrued sick leave, or a minimum of 12 weeks as defined under the Family Medical Leave Act of 1993 (FMLA) should said accrued sick leave be less than 12 weeks, the Town shall have the option to terminate this Agreement; provided, the Town shall pay the full amount of severance pay set forth in Section 3 above. The Manager shall, during such disability event, continue to accrue vacation leave and sick leave and receive holiday compensation benefits. A termination due to disability shall not be exercised unreasonably.

6. Compensation.

6.1 Salary. The Town agrees to pay the Manager a base salary of \$186,700 for fiscal year 2024-25 (pro-rated to actual length of service during such fiscal year) for her services rendered pursuant to this Agreement, payable in installments at the same time as other management employees of the Town are paid. In the event the Manager has met or exceeded the Town

Council's expectations during any fiscal year under this Agreement, as determined according to the performance evaluation criteria set forth in Section 7 below, the Manager's base salary shall be increased in each fiscal year (beginning FY 2025-2026) by the same percentage amount approved by the Town Council for other Chino Valley employees as a market adjustment and/or cost of living increase, if any, as part of the Town's annual budget, plus any merit pay increase as deemed appropriate by the Town Council; provided, that for FY 2024-25, the Manager shall be eligible for such increase after the initial six-month evaluation as set forth in Section 7 below. The Town shall adjust the Manager's other benefits in such amounts as are generally provided other Town employees unless otherwise provided for in this Agreement.

6.2 Disability, Health and Life Insurance. The Town agrees to provide and to pay the premiums for major medical insurance and dental insurance for the Manager and her dependents in the same percentages that are provided to all other salaried employees of the Town. Except as otherwise provided in this Agreement, the Manager shall be entitled, at a minimum, to the highest level of benefits enjoyed by and/or available to other employees, department heads or general employees of the Town as provided by the Town's policies, Town Code, ordinances, personnel rules and regulations or other practices. The coverages provided for herein shall be subject to such changes as the Town or its insurance carrier may make from time to time applicable to all full-time employees of the Town. Additionally, any other coverage that may be added by the Town in the future that is applicable to other full-time employees of the Town will be made available to the Manager on the same terms and conditions extended to such other employees and/or their dependents.

6.3 Retirement. The Manager shall be entitled to enrollment in the Arizona State Retirement System as provided by Arizona law, and the Town will make payments for such retirement as provided by law.

6.4 Cellular Telephone and Automobile. The Town shall provide the Manager a monthly cellular telephone stipend and monthly automobile allowance, which together shall be \$600.00 per month, subject to the conditions below. The sum shall be paid by separate check each month.

A. Cellular Telephone. The Manager shall maintain a cellular telephone, with a telephone number published internally in the Town directory, for use in conducting Town business.

B. Automobile. The Manager shall retain and maintain a vehicle that is clean, mechanically sound and suitable for such use as may be required for Town business. The Manager shall also be responsible for providing insurance coverage on this vehicle in such amounts adequate to provide protection to the Town in the event of an accident while the vehicle is being used for Town purposes. When travel outside of the "Quad Cities" area for Town business is required, the Manager will be reimbursed at the then-current IRS rate after submission by the Manager of a reimbursement request.

6.5 Leave.

A. Vacation Leave. The Manager shall be entitled to accrue and use vacation leave at the highest accrual rate and under the terms and conditions that apply to other Town employees pursuant to the Town of Chino Valley Personnel Policy and Administrative Guidelines Manual (“**Personnel Manual**”). The Manager may utilize such leave following prior, written notice to the Mayor. Upon termination of employment, the Town shall pay the Manager for her accrued but unused vacation leave. As of the date of this Agreement, the Manager’s vacation leave bank shall be credited with one additional week.

B. Sick Leave. The Manager shall be entitled to accrue and use sick leave, to participate in the sick leave bank, and upon the termination of employment, to be paid for unused sick leave. The Manager shall accrue sick leave according to the Personnel Manual. The accrued sick leave hours may be “banked” or converted into vacation time in accordance with the Town’s policies and procedures applicable to other full-time employees. As of the date of this Agreement, the Manager’s sick leave bank shall be credited with one additional week.

C. Holidays. The Manager shall be afforded with paid holidays according to the then-current Personnel Manual.

7. Performance Evaluation. The Town Council shall review and evaluate the Manager initially six months after the Start Date and thereafter annually review and evaluate the Manager’s performance as far in advance of the adoption of the annual operating budget as practicable, but not later than May 30th each year. The Manager’s review and evaluation shall be based upon (i) success at fulfilling the reasonably achievable goals and performance objectives set forth by the Town Council in a goal-setting retreat, (ii) personnel management, including overall management style and ability to lead and direct staff and ability to supervise department heads, but specifically excluding any evaluation of the Manager’s hiring and firing decisions with respect to individual staff members, (iii) obtainment of additional, reasonably-achievable policy objectives and goals as set forth by a majority of the Town Council at a public meeting; provided, however, that such goals and objectives are generally obtainable within the time allowed and within the limitations of the annual budget, and (iv) professionalism, including manner of addressing the Town Council, preparation of Town Council agendas and supporting material and preparation and management of the annual budget.

8. Dues and Subscriptions. The Town agrees to budget for and to pay for the Manager’s professional dues and subscriptions necessary for her continuation and full participation in national, regional, state and local associations and organizations of which she is currently a member or expected to be a member because of her position as Town Manager, and for other necessary and desirable expenses for her continued professional participation, growth, and advancement, and for the good of the Town, as the Town Council deems appropriate. The Town shall pay for the Manager’s dues and membership fees in three such professional organizations. This benefit shall not be included as a portion of Severance Pay as set forth in Section 3 above.

9. Professional Development.

9.1 Professional Associations. The Town hereby agrees to budget for and to pay for the Manager's travel expenses of professional and official travel, meetings, and occasions it deems necessary to continue her professional development and to adequately pursue necessary official functions for the Town, including but not limited to the ICMA annual conference, the Arizona City/County Management Association conferences, the League of Arizona Cities and Towns annual conference, and such other national, regional, state, and local governmental groups and committees thereof on which the Manager serves as a member. The Town shall budget and pay for the Manager's attendance at up to three conferences held by such professional organizations. The Manager may request Town Council approval for additional conference travel, which approval may be granted in the Town Council's sole discretion. This benefit shall not be included as a portion of Severance Pay as set forth in Section 3 above.

9.2 Continuing Education. The Town also agrees to budget for and to pay for the Manager's reasonable travel, registration and subsistence expenses for short courses, institutes and seminars that it deems necessary for her professional development and for the good of the Town. This benefit shall not be included as a portion of Severance Pay as set forth in Section 3 above.

10. Expenses. The Town recognizes that certain expenses of a non-personal and generally job-affiliated nature are periodically incurred by the Manager. The Town shall reimburse the Manager for reasonable travel, food, lodging and other similar expenses incurred by the Manager in the performance of her official duties, in accordance with the same policies and procedures applicable to other employees as such policies and procedures currently exist or are hereafter amended. The Manager shall be authorized and allowed to use a Town credit card for purposes of charging reasonable business expenses incurred in conducting Town business. Other than travel required for attendance at the ICMA annual conference, business travel outside of the State of Arizona must be pre-approved in the Town Council's sole discretion and the Manager shall only be reimbursed and be allowed to charge for reasonable travel, food, lodging and similar expenses related thereto if the Town Council has, in its sole discretion, approved of such out-of-state travel. The Town agrees to (i) reimburse or to pay said general expenses described in this Section 10, and (ii) authorizes the Finance Director or authorized designee to disburse such monies upon receipt of duly executed expense or petty cash vouchers, receipts, statements or personal affidavits.

11. Civic Club Membership. The Town recognizes the desirability of representation in and before local civic and other organizations, and the Manager is authorized to become a member of such civic clubs or organizations the Town Council deems necessary and for which the Town shall pay all expenses. The Manager shall report to the Town Council on each membership that she has taken out at the Town's expense.

12. Indemnification. In addition to that required under state and local law, the Town shall defend, save harmless, and indemnify the Manager from and against any tort, professional liability claim, or demand or other legal action, whether groundless or otherwise, arising out of an alleged act or omission occurring in the performance of the Manager's duties as prescribed by the

Town Code or separate directions of the Town Council. Except for actions or omissions which are intentional and tortious, or criminal in nature, the Town shall indemnify, defend, and hold the Manager harmless from all liability for damages, court costs, litigation expenses, defense costs, and attorneys' fees which arise out of the acts or omissions of the Manager committed within the course and scope of the Manager's employment. If the Manager engages in actions or omissions which are intentional and tortious or criminal in nature, then the Town may, in the sole discretion of the Town Council, indemnify, defend and/or hold the Manager harmless from all liability for damages, court costs, litigation expenses, defense costs, and attorneys' fees which arise out of the acts or omissions of the Manager committed within the course and scope of the Manager's employment.

13. Insurance. At all times while this Agreement is in effect, the Town shall maintain in force a professional errors and omissions insurance policy, with policy limits of not less than \$1,000,000, insuring the Manager against claims arising out of the performance of the Town Manager's duties within the scope of her employment.

14. Bonding. The Town shall bear the full cost of any fidelity or other bonds required of the Manager under any law or ordinance.

15. Default; Cure. Failure or unreasonable delay by the Manager or the Town to perform or otherwise act in accordance with any term or provision hereof shall constitute a breach of this Agreement and, if the breach is not cured within 30 days after written notice thereof from the other party, shall constitute a default under this Agreement; provided, however, that if the failure is such that more than 30 days would reasonably be required to perform such action or comply with any term or provision hereof, then the party shall have such additional time as may be necessary to perform or comply so long as the party commences performance or compliance within 15 days after written notice and diligently proceeds to complete such performance or fulfill such obligation (the "Cure Period"); provided further, however, that no such Cure Period shall exceed 90 days, unless otherwise agreed to, in writing, by the parties. Any notice of a breach shall specify the nature of the alleged breach and the manner in which said breach may be satisfactorily cured, if possible. In the event a breach is not cured within the Cure Period, the non-defaulting party shall have all rights and remedies which may be available under law or equity.

16. Notices and Requests. Any notice or other communication required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given if (i) delivered to the party at the address set forth below, (ii) deposited in the U.S. Mail registered or certified, return receipt requested, to the address set forth below or (iii) given to a recognized and reputable overnight delivery service, to the address set forth below:

If to the Town:	Town of Chino Valley
	202 North State Route 89
	Chino Valley, Arizona 86323
	Attn: Mayor

With copy to: GUST ROSENFELD, P.L.C.
One East Washington Street, Suite 1600
Phoenix, Arizona 85004-2553
Attn: Andrew McGuire

If to the Manager: Terri Denemy
202 North State Route 89
Chino Valley, Arizona 86323

or at such other address, and to the attention of such other person or officer, as any party may designate in writing by notice duly given pursuant to this Section. Notices shall be deemed received (i) when delivered to the party, (ii) three business days after being placed in the U.S. Mail, properly addressed, with sufficient postage or (iii) the following business day after being given to a recognized overnight delivery service, with the person giving the notice paying all required charges and instructing the delivery service to deliver on the following business day. If a copy of a notice is also given to a party's counsel or other recipient, the provisions above governing the date on which a notice is deemed to have been received by a party shall mean and refer to the date on which the party, and not its counsel or other recipient to which a copy of the notice may be sent, is deemed to have received the notice.

17. Waiver. No delay in exercising any right or remedy shall constitute a waiver thereof, and no waiver by the Town or the Manager of the breach of any covenant of this Agreement shall be construed as a waiver of any preceding or succeeding breach of the same or any other covenant or condition of this Agreement.

18. Attorneys' Fees. In the event either party finds it necessary to bring any action at law or other proceeding against the other party to enforce any of the terms, covenants or conditions hereof, or by reason of any breach or default hereunder, the party prevailing in such action or other proceeding shall be paid all reasonable costs and reasonable attorneys' fees by the other party and, in the event any judgment is secured by said prevailing party, all such costs and attorneys' fees shall be included therein, such fees to be set by the court and not by jury.

19. Headings. The descriptive headings of the sections of this Agreement are inserted for convenience only and shall not control or affect the meaning or construction of any of the provisions hereof.

20. Further Acts. Each of the parties hereto shall execute and deliver all such documents and perform all such acts as reasonably necessary, from time to time, to carry out the matters contemplated by this Agreement.

21. Time of the Essence. Time is of the essence in this Agreement.

22. Assignment. This Agreement may not be assigned, in whole or in part.

23. Entire Agreement. This Agreement constitutes the entire agreement between the parties hereto pertaining to the subject matter hereof. All prior and contemporaneous agreements,

representations and understandings of the parties, oral or written, are hereby superseded and merged herein.

24. Amendment. No amendment or waiver of any provision in this Agreement will be binding (i) on the Town unless and until it has been approved by the Town Council and has become effective or (ii) on the Manager unless and until it has been executed by the Manager or her authorized representative.

25. Governing Law. This Agreement is entered into in Arizona and shall be construed and interpreted under the laws of the State of Arizona.

26. Severability. Every provision of this Agreement is and will be construed to be a separate and independent covenant. If any provision in this Agreement or the application of the same is, to any extent, found to be invalid or unenforceable, then the remainder of this Agreement or the application of that provision to circumstances other than those to which it is invalid or unenforceable, will not be affected by that invalidity or unenforceability. Each provision in this Agreement will be valid and will be enforced to the extent permitted by law and the parties will negotiate in good faith for such amendments of this Agreement as may be necessary to achieve its intent, notwithstanding such invalidity or unenforceability.

27. Covenant of Good Faith. In exercising their rights and in performing their obligations pursuant to this Agreement, the parties will cooperate with one another in good faith to ensure the intent of this Agreement can be attained. The Town and its Town Council shall not unreasonably withhold appropriation authority to fund the salary, benefits and other provisions of this Agreement.

28. Conflict of Interest. This Agreement may be cancelled by the Town pursuant to ARIZ. REV. STAT. § 38-511.

29. Counsel Assistance; Fair Interpretation.

29.1 Counsel for the Manager. The Manager has either been assisted by counsel in connection with the preparation and execution of this Agreement or has chosen to forego such legal representation despite a recommendation from the Town that the Manager seek advice from legal counsel.

29.2 Counsel for Town. The Town has been assisted by counsel of its own choosing in connection with the preparation and execution of this Agreement.

29.3 Fair Interpretation. This Agreement shall be construed according to the fair meaning of its language. The rule of construction that ambiguities shall be resolved against the party who drafted a provision shall not be employed in interpreting this Agreement.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties have executed this Agreement on the day and year first set forth above.

“Town”

TOWN OF CHINO VALLEY, an Arizona
municipal corporation

“Manager”

Jack W. Miller, Mayor

Terri Denemy

ATTEST:

Erin N. Deskins, Town Clerk

APPROVED AS TO FORM

Andrew J. McGuire, Town Attorney
Gust Rosenfeld P.L.C.